#F-521 8/31/84

Memorandum 84-69

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

Background

The Commission promulgated its final recommendation on community property in joint tenancy form in June 1984, but took the unusual step of delaying publication and sending out the final draft for further comment. We sent out the attached draft in July 1984 to all persons who had previously commented on this subject, with a request for any additional comments. The additional comments are attached to this memorandum as Exhibits.

The effect of the Commission's recommendation is that property taken by married persons as joint tenants would be treated as community property. This preserves existing law as to division at dissolution of marriage, and extends it for other purposes such as creditors' remedies, disposition at death, and taxation. Community property treatment of joint tenancy property for these purposes can be obtained under existing law, but it requires proof of intent to preserve the community character of the property and frequently results in litigation.

Creditors' Remedies

Two commentators opposed the recommendation because of its impact on creditors' remedies. See Exhibits 1 (Alvin G. Buchignani) and 2 (Prof. Jerome J. Curtis, Jr.). A creditor has greater rights against community property than against true joint tenancy (separate) property, both inter vivos and at death. During life, a creditor of one spouse can reach all community property but only the spouse's half of true joint tenancy property. At death, a creditor of the decedent can reach all community property that passes to the surviving spouse but can reach none of the true joint tenancy property that passes. The commentators object that by making property in joint tenancy form community, creditors are favored at the expense of the spouses. The commentators believe that this detriment to the spouses outweighs any benefits the spouses gain under the recommendation.

There are several observations that should be made about this point of view. First, the commentators assume that the property in question

is true joint tenancy (i.e., separate) property. However, in most cases it is not; it is community property which has been placed in joint tenancy form without knowledge of the consequences and without the intent to make a transmutation from community property to separate property. It is this situation that has given rise to unending litigation under existing law, with parties concocting proof of "intent" to transmute or not to transmute, depending upon their ultimate advantage. There is no guarantee that the property will be found to be true joint tenancy in the face of a creditor's claim against the property.

Second, even if the property is found to be true joint tenancy, the commentators assume that the ability to avoid creditors' claims is more important to the spouses than the ability to minimize taxes. Although we have no statistics, the staff questions this assumption. We believe that most persons pay their debts, and are more concerned about tax savings. It will be an unusual case in which it is more advantageous to the spouses to defeat creditors than to avoid a substantial capital gains tax. Moreover, it is only unsophisticated creditors (such as a relative who has loaned money) who will be defeated by the joint tenancy title form. A sophisticated creditor will obtain the signatures of both spouses before extending credit on the security of joint tenancy property.

Finally, even if the property is found to be true joint tenancy and, under the facts of the particular case, it is to the spouses' interest to defeat claims of creditors, the staff questions whether it is desirable public policy to promote this. The concept of the community property scheme is that property is owned in common by the spouses and is liable for the debts of either. One of the great strengths of the community property system is that by making all property of the marriage available to creditors, the ability of either spouse to obtain credit is enhanced. Further, the staff can see no justification to structure the law in a manner that will defeat the legitimate claims of creditors, particularly if the result depends upon the accident of the particular title form selected or chanced upon by the spouses. From a public policy perspective, the staff believes it is more desirable to ensure the satisfaction of debts than to enable the avoidance of debts.

Clearing Title

Professor Benjamin D. Frantz (Exhibit 3) expresses concern that the statute converting joint tenancy to community property will make it difficult to clear title to the property simply and without the need for

a lawyer. "I have heard that some title companies do have forms of affidavit to be used in the same manner as those with respect to joint tenancy property; but inquiry at our local title insurance companies has failed to discover any such form."

We have tried to make clear in the recommendation and commentary that the affidavit procedure is appropriate for community property in joint tenancy form. Perhaps we should add to the statute itself language that cross-refers to the general provisions that enable the survivor to deal fully with the property after 40 days.

Conclusion

The staff finds nothing in the comments received on the recommendation that would lead us to make any substantial changes (other than making clear the affidavit of death linkage). Before the Commission proceeds with publication of the recommendation, however, you may wish to review the reasons for the recommendation and redetermine whether these reasons justify the new rigidity being imposed on the law in this area.

The reasons for the recommendation are summed up by Professor Curtis (Exhibit 2):

> The main objectives underlying the Recommendation are (1) to minimize litigation over questions of transmutation, (2) to ease the administration of the estate of married persons, and (3) to avoid some tax disadvantages of holding title in joint tenancy.

However, these problems are being handled under existing law without difficulty in the usual case, and the spouses are able to achieve the most desirable and trouble-free results for themselves ordinarily. It is the non-ordinary case which creates problems under existing law. The question to which the Commission must apply its judgment is whether curing the problems for the non-ordinary case is a sufficiently important objective to warrant destruction of the existing flexibility in the law for all cases.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

EXHIBIT 1

ALVIN G. BUCHIGNANI
ATTORNEY AT LAW

ASSOCIATES WITH
KNIGHT, BOLAND & RIORDAN

100 PINE STREET, SUITE 3300
SAN FRANCISCO, CA 94111
(415) 362-0684

July 27, 1984

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

Re: Commission Study of Joint Tenancy and Community Property

Dear Mr. Sterling,

I have reviewed the recommendation relating to community property in joint tenancy form dated June, 1984. I have previously commented on earlier drafts of the commission proposal, in opposition to the automatic treatment of joint tenancy property as community property.

The persons whose interests will be adversely effected by the proposal are spouses who need protection from the creditors of the other spouse. The proposal will make all joint tenancy property automatically subject to the liabilities of either spouse. The persons most likely to suffer are those who need the protection most. They are not likely to have legal counsel and will lose the opportunity to save their property from the improvidence of a deceased spouse.

Very sincerely

Alvin G. Buchignani

AGB/cc
D84/115

EXHIBIT 2

McGEORGE SCHOOL OF LAW

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

August 2, 1984

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

RE: Study on Joint Tenancy and Community Property

Gentlemen and/or Ladies:

Thank you for a copy of the Recommendation on Joint Tenancy and Community Property under cover of memorandum of July 20, 1984.

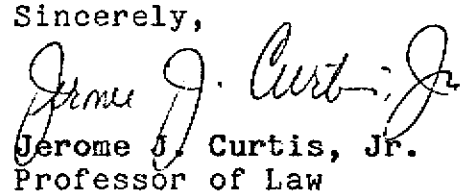
While the principal thrusts of the Recommendation are laudatory, it would effect a drastic change in the rights of creditors of married joint tenants. In the past, creditors of a married person could satisfy their claims only out of community property and separate property of the debtor spouse; under the Recommendation creditors would be entitled to the presumption that joint tenancy property is community property and thus likely could reach even the half interest of the non-debtor spouse. Mr. Sterling has acknowledged as much in his article in the Pacific Law Journal (see 14 Pac. L. J. 947-8) where he points out that the Legislature has already rejected an attempt to effect such a change in the rights of creditors. I doubt very much that married persons in California intend to subject their interests in joint tenancy property to the claims of their spouses' creditors, and in proposing this change the Commission does a disservice to these married persons.

The main objectives underlying the Recommendation are (1) to minimize litigation over questions of transmutation, (2) to ease the administration of the estate of married persons, and (3) to avoid some tax disadvantages of holding title in joint tenancy. All of these objectives can be achieved without denying married persons the traditional protection vis a vis creditors in property held in joint tenancy form. I, therefore, renew my suggestion (see my letter to you of February 29, 1984) that language like the following included in your Recommendation:

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

Thanking you for your consideration, I am

Sincerely,



Jerome J. Curtis, Jr.
Professor of Law

JJC:pkw

EXHIBIT 3

McGEORGE SCHOOL OF LAW

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

August 14, 1984

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

Attention: Mr. Nathaniel Sterling
Assistant Executive Secretary

Subject: Community Property in Joint Tenancy Form

Dear Mr. Sterling:

This will acknowledge your memorandum of July 20, 1984, with which you forwarded to me the recommendation concerning community property in joint tenancy form.

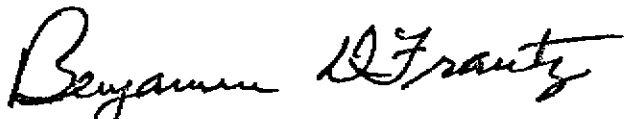
I do have reservations concerning the proposal because the joint tenancy form of ownership has survived for many, many years and has served a useful purpose in permitting people to handle their real property affairs without incurring the expense of retaining a lawyer. I concede the abuses mentioned in the recommendation but hasten to point out that, in the case of the average person, the device has probably served a useful purpose. If people do have a problem, it is probably of sufficient magnitude that the persons would consult an attorney for its solution, so that this proposed legislation would be unnecessary to accomplish its stated purpose.

On page 4 of the recommendation, it is stated that the title to community property could be cleared either by a summary proceeding or by recorded affidavit in the same manner as joint tenancy. If the person seeks a court order, in most cases he will feel impelled to utilize the services of a lawyer. I have heard that some title companies do have forms of affidavit to be used in the same manner as those with respect to joint tenancy property; but inquiry at our local title insurance companies has failed to discover any such form.

I agree with the statement on page 4 of the recommendation that the stepped-up federal income tax basis is a desirable attribute of community property; but I doubt whether that consideration is sufficient to warrant the enactment of the proposed legislation.

My real purpose in writing to you is to remark on the proposed creation by the legislature of the same kind of survivorship property without the "joint tenancy" label. I speak particularly of Assembly Bill 2290 which proposes to amend Probate Code section 6401, subdivision (a), to provide that the "intestate share of the surviving spouse IS the one-half of the community property that belongs to the decedent," which of course is in conflict with the traditional "passes to" found in section 649.1. If enacted, perhaps the effect of the legislation would be to give the surviving spouse the option to determine whether he or she was taking a survivorship interest or succeeding to the decedent's intestate interest. In any event, I can see no reason for the apparent conflict.

Very truly yours,



BENJAMIN D. FRANTZ
Professor of Law

BDF:bk

cc: Mr. James A. Willett

#F-521

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

RECOMMENDATION

relating to

COMMUNITY PROPERTY IN JOINT TENANCY FORM

June 1984

CALIFORNIA LAW REVISION COMMISSION
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303

#F-521 7/16/84

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

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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), reprinted in 10 Comm. Prop. J. 157 (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).

not intend to transmute community property to joint tenancy or, if they did, that they subsequently transmuted it back.[4]

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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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).

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

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 community for all purposes, unless there is a contrary 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 joint tenancy title form, and will ensure certainty and eliminate litigation over the issue.

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), reprinted in 10 Comm. Prop. J. 157 (1983); Mennell, Community Property with Right of Survivorship, 20 San Diego L. Rev. 779 (1983); Mennell, Survivorship Rights in Community Property, 11 Comm. Prop. J. 5 (1984).

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.

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 not only enable passage at death to the surviving spouse without probate, it will also ensure favorable tax treatment. Community property passes automatically to the surviving spouse absent testamentary disposition by the decedent.[10] Probate administration is not required for community property that passes to the surviving spouse either by testate or intestate succession.[11] Title to such property can be cleared quickly and simply either by court order in a summary proceeding[12] or by affidavit in the same manner as joint tenancy.[13]

Community property has the added advantage for the survivor over joint tenancy property that the survivor is entitled to a step-up of the federal income tax basis of the property.[14] In addition, the decedent retains the right of testamentary disposition, thereby avoiding possible frustration of an estate plan and enabling the property to be passed to an exemption-equivalent testamentary bypass trust, with resultant estate tax savings for the survivors.

In short, community property tenure is more advantageous to the parties than joint tenancy tenure in the ordinary case, and it corresponds to the ordinary expectations of the parties who take joint tenancy title form. Community property in joint tenancy form should receive community treatment for all purposes, unless the parties clearly indicate in writing their intent to treat their interests as separate property.

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

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

12. Prob. Code §§ 650-657.

13. Cf. Prob. Code § 203 (right of surviving spouse), reenacted as Prob. Code § 649.2, operative January 1, 1984; Prob. Code §§ 210-212 (affidavit of death), enacted by Cal. Stats. 1984, ch. 527.

14. See discussion in 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 (1983).

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

An act to add Section 5110.5 to, 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:

968/676

Civil Code § 4800.1 (repealed). Community property presumption

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. Former Section 4800.1 is superseded by Section 5110.5 (community property in joint tenancy form).

31559

Civil Code § 5110.5 (added). Community property in joint tenancy form

SEC. 2. Section 5110.5 is added to the Civil Code, to read:

5110.5. (a) Property the title to which is taken during marriage in joint tenancy form solely between husband and wife is community property, unless one of the following conditions is satisfied:

(1) The deed or other documentary evidence of title contains a clear statement that the property is separate property or is not community property.

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

(b) The characterization of property as community pursuant to this section is not altered by tracing 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 at dissolution of marriage pursuant to Section 4800.2.

(c) Nothing in this section affects any statute that prescribes the manner or effect of a transfer, inter vivos or at death, of property registered, licensed, or otherwise documented or titled in joint tenancy form pursuant to the statute.

(d) This section 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.

(e) This section becomes operative January 1, 1986, and applies to all property the title to which is taken in joint tenancy form before, on, or after the operative date, except that:

(1) This section 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.

(2) This section does not apply until two years after the operative date to property the title to which is taken in joint tenancy form before the operative date, regardless whether payments on or additions to the property are made on or after the operative date, and until then the property is governed by the law applicable before the operative date. During the two year period either spouse may elect to have the law applicable before the operative date continue to govern the property beyond the two year period by executing and recording a notice of intent to preserve existing law, and to this extent the law applicable before the operative date is continued in effect. A notice of intent to preserve existing law shall be in the same form and shall be executed, recorded, and indexed in the same manner, to the extent applicable, as a notice of intent to preserve an interest in real property pursuant to Article 3 (commencing with Section 880.310) of Chapter 1 of Title 5 of Part 2 of Division 2, except that as to personal property the notice may be recorded in either the county in which the property is located or the county in which the parties reside.

Comment. Subdivision (a) of Section 5110.5 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 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), reprinted in 10 Comm. Prop. J. 157 (1983). Subdivision (a) 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 broadens the community property characterization for all purposes, not just for purposes of division at dissolution of marriage. Subdivision (a) does not distinguish between community property and quasi-community property, since both spouses have a present interest in property held in joint tenancy form.

The community property characterization is subject to a contrary express intention of the parties in the form of a written statement, in the deed or otherwise, negating the community character or affirming the separate character of the property. This will help ensure that any transmutation of community property to separate property by the spouses is in fact intentional.

Ownership of community property 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. See subdivision (b).

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 (c) saves existing schemes governing transfer of title, probate and nonprobate, applicable to specified types of property. See, e.g., Vehicle Code §§ 4150.5, 5600.5 (coownership vehicle registration); Health & Safety Code § 18080 (coownership manufactured home, mobilehome, or commercial coach registration).

Subdivision (d) 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).

Subdivision (e) states the legislative intent to make this article 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 conformance of the change with the ordinary expectations of the average joint tenant, 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, subdivision (e) provides a two-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, or may simply preserve prior law if they are unable to agree.