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5/7/86

Second Supplement to Memorandum 86-41

Subject: Study L-1030 - Estate and Trust Code (Distribution Without  
Administration)

Attached is a report from Team 2 (State Bar Estate Planning, Trust and Probate Law Section) concerning the two proposals of Mr. Olds that are the subject of Memorandum 86-41. The team agrees with the staff recommendation that the suggestions of Mr. Olds should be studied by the Commission.

The team also makes a number of comments concerning the proposals of Mr. Olds that will be useful to the staff in making the study. Some of the comments concern matters that are dealt with in the proposed Missouri statute.

Respectfully submitted,

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March 28, 1986

*Team 2*

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Re: LRC Memorandum 86-41, Transfer-on-Death Forms

Dear Jim:

Lloyd Homer and I have discussed the above Memorandum. Since it has been suggested that the LRC staff study both of Mr. Olds's proposals, and we concur in that suggestion, we did not think that a conference call to the full group was justified at this point. However, we do have the following comments:

1. Statutory transfer-on-death provisions applicable to real property.

(a) Real property may be a decedent's most significant asset, and as such is perhaps best transferred on death by will or by intestacy. A person making use of the transfer-on-death designation, without the formalities of a will, may too easily designate one of several children or other intended beneficiaries, for convenience, as representative of the group, actually intending that several beneficiaries succeed to the property.

(b) Is it appropriate for real property to pass, pursuant to a transfer-on-death designation, without being subject to creditors' claims?

(c) Would a subsequent will override the transfer-on-death arrangement?

(d) In the case of multiple transfer-on-death beneficiaries, what happens if one predeceases the property owner?

2. Community property held in joint tenancy.

(a) It is not certain that the IRS would allow a full stepped-up basis under this format.

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(b) An estate plan may be defeated by joint tenancy ownership, and any new joint tenancy format should be carefully scrutinized with this concern in mind.

(c) Mr. Olds may not have considered the availability of Probate Code Section 649.1 to pass community property to a surviving spouse by affidavit.

We suggest that these comments be forwarded to the LRC, to assist it in studying Mr. Olds's proposals.

Sincerely yours,



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