

## Third Supplement to Memorandum 88-47

Subject: Study F-641/L-3020 - Limitations on Disposition of Community Property (State Bar Corporations Committee Comments)

Attached to this supplementary memorandum is a letter from the Corporations Committee of the State Bar Business Law Section with two comments on the draft of limitations on disposition of community property.

§ 5125.220. Person in whose name title stands must join

Subdivision (a) of this section states that each spouse in whose name "record title or other documentary evidence of title" to community property is held must join in a disposition of the property. The Bar Committee is concerned that this undefined phrase could be read over-broadly to include bills of sale and similar documents, even though such writings are not title documents.

The staff agrees with this observation. As phrased, any piece of non-title paper could be construed to be "documentary evidence of title", resulting in a joinder requirement contrary to the general purpose of the community property disposition rules. This provision needs to be refined.

The Bar Committee's suggestion is to limit the provision to record ownership of property. The staff agrees with this suggestion, but would draft it thus:

(a) Except as provided in subdivision (b), each spouse in whose name record title ~~or other documentary evidence of title~~ to community personal property is held must join in a disposition of the property. As used in this subdivision, "record title" means:

(1) Documentary evidence of title, the delivery of which is necessary to transfer title to the property.

(2) In the case of an uncertificated security, registration of the security as reflected in the records of the issuer.

Comment. The reference in subdivision (a)(1) to documentary evidence of title, the delivery of which is necessary to transfer legal title to property, includes (1) a

certificated security and (2) a certificate of title or registration issued by a governmental agency, such as for a motor vehicle, vessel, or aircraft.

§ 5125.330. Business transactions

Section 5125.330 recodifies the rule that the spouse having primary management and control of a community personal property business may act alone in all transactions, subject to the general community property joinder requirements (gifts, real property transactions, etc.). The Bar Committee points out that this limitation may be a problem where the managing spouse is selling a small business that includes a leasehold interest in real property. The existence of a lease should not have the effect of converting a community personal property business into a real property business, with the attendant title problems and lack of certainty for a transferee of the business.

The Bar Committee suggests the following clarification:

Notwithstanding the limitations provided in Section 5125.230, a spouse having primary management and control of a community personal property business may transfer title to the lessee's interest in any lease of real property related to the business without the joinder or consent of the other spouse provided that the lease agreement does not identify the other spouse as a lessee.

The staff believes this clarification is appropriate.

Respectfully submitted,

Nathaniel Sterling  
Assistant Executive Secretary

**BUSINESS LAW SECTION  
THE STATE BAR OF CALIFORNIA**

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November 28, 1988

Nathaniel Sterling, Esq.  
California Law Revision Commission  
4000 Middlefield Road  
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Palo Alto, CA 94303

Re: Memorandum 88-47 - Disposition of Community Property

Dear Mr. Sterling:

A copy of Memorandum 88-47, dated June 3, 1988, was furnished to Corporations Committee of the Business Law Section of the State Bar of California. As you and I discussed on the telephone, the Committee has reviewed the Memorandum and would like to pass on two comments for consideration by the Law Revision Commission. We attempted to send our comments to you by November 15, 1988, as you requested, but unfortunately we were unable to meet that schedule. We hope that the comments will still be useful.

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1. Proposed Section 5125.220(a) states:

Except as provided in subdivision (b), each spouse in whose name record title or other documentary evidence of title to community property is held must join in a disposition of the property.

As noted in the Memorandum, current law provides that with certain exceptions either spouse can convey title to community personal property. We agree with the Commission with respect to its observation that it is current practice to require the signatures of both spouses when both names appear on a certificate of title and, therefore, we do not disagree with the intent of the proposed change in the law. We are concerned, however, that the language of proposed Section 5125.220(a) may be too broad.

The Committee is concerned that the language "record title or other documentary evidence of title," which is undefined, may be read so broadly as to include bills of sale and similar documents which may provide evidence of title but which are not indispensable to the transfer of title. In fact, it is conceivable that the language might include bank account documentation, an interpretation which might disrupt current banking practices regarding joint checking accounts. While the Committee recognizes that signature cards which expressly permit either spouse to sign checks might bring the situation within the scope of proposed Section 5125.220(b), we are concerned that the signature cards alone, which affect the right to draw funds and not necessarily the title to those funds, may not satisfy the requirements of that section.

To address the concerns of the Committee, we suggest that proposed Section 5125.220(a) be changed to the following:

Except as provided in subdivision (b), each spouse must join in the disposition of any community property of which such spouse is a record owner as reflected on a certificated security or a certificate of title or registration issued by a governmental agency (such as are issued with respect to motor vehicles, vessels and aircraft), the delivery of which is required to effect the transfer of legal

title to the property, or, in the case of an uncertificated security, as reflected on the books of the issuer of the security.

2. The Committee also suggests that the Commission consider recommending a change in the law governing the disposition of community personal property businesses. Proposed Section 5125.330, which is reflective of the current state of California law, states:

Subject to the limitations provided in Article 2 (commencing with Section 5125.210), a spouse having primary management and control of a community personal property business may act alone in all transactions.

Proposed Section 5125.230, which also reflects current law, provides:

Both spouses must join in a disposition of community real property.

The possible combined effect of these sections is that both spouses may be required to join in the transfer of a real property lease which relates to a community personal property business even if the spouse having primary management and control of the business is the only person identified on the lease as lessee.<sup>1</sup>

The Committee believes that consideration should be given to granting to a spouse with primary management and control of

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<sup>1</sup>A recent case, Taylor v. Bouissiere, 196 Cal.App.3d 1197 (1987), indicated that a leasehold estate may be a "chattel real" rather than real property, at least for certain purposes. If the rationale of this case were upheld, an assignment of a lease presumably would not fall within proposed Section 5125.230 at all. Nevertheless, many real estate lawyers have criticized the holding of Taylor v. Bouissiere that leasehold interests are not "real property." Therefore, we believe that the case may not reflect current California law and that our proposed language for Section 5125.230 is still desirable in order to provide clear guidance in this area.

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a community personal property business the right to transfer any real property leases which relate to the business without the necessity of obtaining the joinder of the other spouse in the transfer. This would not only confirm in the managing spouse the complete right to transfer the business, as seems to be intent of the current law, but would also relieve the buyer of such a business from the burden of determining whether or not the seller is a married person.

The Committee believes that most buyers and sellers of personal property businesses may be unaware of the possible legal necessity of obtaining the joinder of both spouses to the transfer of leases relating to such businesses. By and large, these are small "sole proprietorships" which may be sold without the assistance of legal counsel or with minimal involvement by counsel. As a result, we believe that many transfers of leases may be occurring which would not survive challenge by the nonjoining spouse, placing the "innocent" buyers of the businesses involving those leases at risk. When a fee title to real property is involved, customary practice would require that title insurance be obtained, and the requirement of proposed Section 5125.230 appears less problematic since title insurance companies routinely require a quitclaim deed from a spouse whose name does not appear of record.

While the informality often associated with the transfer of real property leases might suggest that proposed Section 5125.230 should be revised specifically to exclude leases altogether, the Committee believes that the problem discussed above is particularly acute only in the area of community personal property businesses, where the current law emphasizes the power of the spouse with primary management and control to "act alone in all transactions." If the Commission were to decide to recommend a change in the law to address the concerns described above, an appropriate change might be the addition of the following sentence to Section 5125.330:

Notwithstanding the limitations provided in Section 5125.230, a spouse having primary management and control of a community personal property business may transfer title to the lessee's interest in any lease of real property related to the business without the joinder or consent of the other spouse provided that

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the lease agreement does not identify the other spouse as a lessee.

I understand that two or more supplements to the Memorandum have been prepared by the Commission, but that these supplements do not address either of the issues raised above. Nevertheless, because of the interest of our Committee in the Memorandum, I would very much appreciate your sending me copies of these supplements and placing my name on the mailing list for any future supplements or revisions to the Memorandum. Please address those materials, as well as any related correspondence, to me at the following address:

William T. Manierre  
Bronson, Bronson & McKinnon  
505 Montgomery Street  
San Francisco, CA 94111-2514

We appreciate the opportunity to comment on the Memorandum.

Very truly yours,

A handwritten signature in cursive script that reads "Bill Manierre".

William T. Manierre