

#L-3040

jd179
04/02/90

First Supplement to Memorandum 90-60

Subject: Study L-3040 - Community Property Presumption for Joint
Tenancy Upon Death

Attached is a letter from Professor William A. Reppy, one of our
expert consultants on family law and probate law. He comments on
Memorandum 90-60.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

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March 28, 1990

John H. DeMouilly
Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739

Re: Memorandum 90-60

Dear John:

You are quite right that present law allows proof that despite use of a joint tenancy title spouses had no intent to transmute community property to joint tenancy property. I independently came to that conclusion some months ago and have been in the process of writing a short article on the point. I was planning to submit it shortly to the Whittier Law Review. The article was going to recommend a change in the law so that the anti-litigation policy of Civil Code section 5110.730 (Statute of Frauds for transmutations) would apply to the situation the memo discusses.

The I.R.S. is submitting to large scale tax fraud committed by Californians who treat property as joint tenancy to avoid probate and then claim it was community property when later reporting the gain on sale by the surviving spouse. Occasionally the I.R.S. objects, but it has not always prevailed. See *Bordenave v. United States*, 150 F. Supp. 820 (N.D. Cal. 1957); *Murphy v. CIR*, 41 T.C. 608 (1964); *Petersen v. CIR*, 35 T.C. 962 (1961).

Thanks for the certificate of appreciation (re consulting on new Probate Code project) that arrived today in the mails.

Sincerely,

Bill R.

William A. Reppy, Jr.
Professor of Law and
Attorney at Law

WAR:jma