

First Supplement to Memorandum 93-42

**Subject: Study F/L-521.1 — Effect of Joint Tenancy Title on Marital Property:
Comments on Revised Draft of Recommendation**

Attached to this memorandum as an Exhibit is a letter from Robert E. Temmerman, Jr., on behalf of the Executive Committee of the State Bar Section on Estate Planning, Trust and Probate Law. The Committee approves the staff draft of the recommendation on the effect of joint tenancy title on marital property and believes it should be submitted to the Legislature.

The Committee also suggests a few minor revisions in the statutory notice form. The staff agrees with these revisions, with one exception.

The Committee suggests that the declaration of joint tenancy be made under penalty of perjury. The staff does not understand the reason for this; after all, this particular type of declaration is a statement of intent, not a recitation of fact. Moreover, in our opinion it is probable that some persons will sign the joint tenancy declaration as one of many unread documents in a stack presented by an escrow officer. The staff believes a declaration under penalty of perjury is inappropriate.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary

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September 13, 1993

Law Revision Commission
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Mr. Nat Sterling
California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

Re: Memorandum 93-42
Effect of Joint Tenancy Title on Marital Property

Dear Mr. Sterling:

At the September 11, 1993 meeting of the Executive Committee of the State Bar Section on Estate Planning, Trust and Probate Law, the Committee voted to recommend to the California Law Revision Commission to approve the staff draft of the Recommendation set forth in the above-referenced memorandum for printing and submission to the Legislature with the following minor changes:

1. Statutory Notice Form - Community Property

The Executive Committee felt that the warning set forth in the last paragraph of the statutory notice under the heading of community property should be rephrased to read as follows: "Do not sign this declaration if you want community property. Instead, you should take title as community property."

2. Statutory Notice Form - Separate Property

Likewise, under the heading of separate property, the last sentence should be stricken and replaced with "Do not sign this declaration if you wish to retain your separate property rights. Instead, you should seek legal advice."

3. Statutory Form - Declaration

In order to meet the requirements of CCP Section 2015.5, the Executive Committee believes that the paragraph following the declaration should have attached "I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct."

4. Statutory Form - Declaration

The proposed legislation constantly refers to the word transmute throughout. However, in the Declaration, the word "convert" is used. The Executive Committee felt it was important to be consistent and accordingly would change the second sentence of the declaration to read "We declare that we intend to transmute (convert) any community property and any separate property interest"

5. Section 863 - Comment

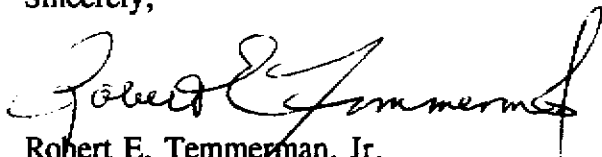
There is a mistake in the last sentence of the comment. That sentence refers to subdivision (c) when in fact it should refer to subdivision (b).

6. Section 5305

Probate Code §5305 (b)(2) has a typographical error. The word "form" should be "from".

The Executive Committee commends both the staff and the Commissioners for its extensive efforts during the last two years on the topic of community property in joint tenancy form. We believe the proposed legislation will benefit the vast majority of married couples in California.

Sincerely,



Robert E. Temmerman, Jr.
RET/gmd (ster913.let)

cc: Valerie J. Merrit, Executive Committee
Thomas Stikker, CLRC Liaison
Monica Del O'sso, CLRC Liaison
Don Green, CLRC Liaison