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October 24, 1995

First Supplement to Memorandum 95-50

New Topics and Priorities: Community Property Issues

Professor Bill Reppy of Duke Law School, who served as the Commission's consultant on community property issues, has sent us a copy of his latest publication, a 104 page law review article on marital property acquired with a mix of community and separate property. The article advocates displacing California's presumption of gift by recognizing shared ownership or a right of reimbursement. The article also identifies a number of narrow issues and idiosyncrasies in existing statutes that should be corrected.

Professor Reppy notes that the Commission does not currently have community property issues on its agenda, but suggests that the reforms suggested in the article are important and could be taken up at some time in the future. Meanwhile, he identifies at least one specific problem where he believes statutory revision is "urgently needed":

Family Code Section 2641, enacted on Commission recommendation, provides that at dissolution of marriage the community is entitled to reimbursement of community funds invested in the education of one of the spouses, subject to limitations (this provision is designed for the situation where one spouse works to put the other spouse through professional school and is divorced soon after the educated spouse begins working). Professor Reppy is concerned that educational expenses may be paid out of a survivorship bank account that transmutes any community funds in the account to separate property. In this situation, the statute is not sufficiently broad to require reimbursement of the separate property contributions.

The staff is not so sure about the urgency of this problem. We would need to do some empirical research to find out whether married persons are in fact using accounts that transmute community to separate property. It is also possible that the California Multiple-Party Accounts Law, enacted on Commission recommendation, adequately addresses the matter. See Prob. Code § 5305 (funds of married persons in multiple-party accounts presumed community subject to tracing to separate property source).

The staff proposes to review Professor Reppy's article carefully and, if there appear to be real problems created by legislation enacted on Commission recommendation that can be easily cured, to propose corrective legislation for Commission consideration. We are reluctant to get deeply into community property law again, since our experience in developing legislation in the area has not been completely satisfactory, for a number of reasons. The reasons include the emotional subtext of most issues, the complexity of the problems and inflexibility of statutory solutions, and the fact that legislative committee members tend to react to proposed legislation based on their perception of how they were unfairly treated in the dissolution of their own marriage.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary