

First Supplement to Memorandum 2004-10

**Multiple Party Accounts: Ownership of Amounts on Deposit
(Comments of State Bar Committees)**

Attached are the following letters we have received in connection with Memorandum 2004-10, relating to ownership of amounts on deposit in a multiple party account:

Exhibit p.

- 1. State Bar Trusts & Estates Section, Executive Committee1
- 2. State Bar Family Law Section, Executive Committee.....2

Both bar committees support the staff proposal in Memorandum 2004-10 to clarify the law governing ownership of amounts on deposit in a multiple party account.

The Family Law Committee observes that the trend in family law is away from presumptions of gift, and that *Lee v. Yang* is an aberrant decision. "Ownership should be based on actual net contributions, unless a successful tracing cannot be done, in which case the default presumption of equal ownership would prevail." Exhibit p. 2.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary

TRUSTS & ESTATES SECTION
THE STATE BAR OF CALIFORNIA

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January 15, 2004

Nathaniel Sterling, Esquire
California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, California 94353-4739

Re: **Multiple Party Accounts; Memorandum 2004-10**

Dear Nat:

On behalf of the Trusts & Estates Section executive committee of the State Bar, I wish to advise you that the executive committee endorses the views and recommendations set forth in your Memorandum 2004-10. Although members of the executive committee were of the opinion that some modifications to the proposals contained in the memorandum would be desirable or necessary, it was the unanimous view of the committee to support your recommendations.

The committee also wishes to extend its thanks and appreciation for a truly excellent study on this subject.

As always, if the executive committee can be of help to your commission in completing its work, we will be happy to assist in any way we can.

Yours very truly,

Christopher M. Moore

CMM/mn



FAMILY LAW SECTION

THE STATE BAR OF CALIFORNIA

January 22, 2004

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Nathaniel Sterling
Executive Secretary
California Law Revision Commission
4000 Middleford Road, Room D-1
Palo Alto, CA 94353-4739

Dear Mr. Sterling:

The Executive Committee of The Family Law Section of the State Bar ("FLEXCOM") considered the December 19, 2003 Memorandum 2004-10 Multiple Party Accounts: Ownership of Amounts on Deposit. While marital accounts are not subject to the proposed legislation, family law attorneys frequently encounter non-marital relationships in their practices. Family law attorneys also have considerable experience in tracing contributions and withdrawals from accounts in order to characterize and value community and separate property interests in commingled accounts.

FLEXCOM supports the proposed legislation which would amend Probate Code section 5301(a) to provide that a multi-party account belongs to the parties in proportion to the net contributions of each party and deleting the reference "to the sums on deposit" to clarify that the proportionate ownership applies to amounts withdrawn as well as to the amounts on deposit. FLEXCOM further supports the proposed amendments to Probate Code 5303(c) which clarifies termination of the right of survivorship on a joint account and limits it to the extent of one party's net contribution to the account.

FLEXCOM agrees that *Lee v. Yang* is an aberration. The trend in family law has been away from presumptions of a gift. (See *In Re Marriage of Wolfe* (2001) 91 Cal.App.4th 962; Family Code section 2640). Family law attorneys routinely trace and characterize joint and separate deposits and withdrawals to bank accounts, as well as to the acquisition of other assets. The difficulty of the task is determined by the availability of adequate records, the span of time and the number of transactions. Ownership should be based on actual net contributions, unless a successful tracing cannot be done, in which case the default presumption of equal ownership would prevail.

January 22, 2004



FAMILY LAW SECTION

THE STATE BAR OF CALIFORNIA

Thank you for keeping our section informed of your efforts and for soliciting our views. We look forward to hearing the outcome of this proposed legislation.

Yours truly,

A handwritten signature in cursive script that reads "Nancy Perkovich".

Nancy Perkovich, Chair
STATE BAR FAMILY LAW SECTION

cc: Gregory Herring
Susan Orloff
Saul Bercovitch

This position is only that of the Executive Committee of the Family Law Section of the State Bar of California. This position has not been adopted by the State Bar's Board of Governors, its overall membership, or the overall membership of the Family Law Section, and is not to be construed as representing the position of the State Bar of California. Membership in the Family Law Section and its Executive Committee is voluntary and funding for section activities, including all legislative activities, is obtained entirely from voluntary sources.