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4/26/88

First Supplement to Memorandum 88-6

Subject: Study L-1060 - Multiple-Party Accounts (State Bar letter)

Attached to this Supplement as Exhibit 1 is a letter from Valerie Merritt for the Executive Committee of the State Bar Estate Planning, Trust and Probate Law Section. The Executive Committee opposes expanding the Multiple-Party Accounts Law to apply to banks and savings and loan associations.

The staff has told the Commission that, when the bill proposing the Multiple-Party Accounts Law (AB 53) was introduced in 1983, it applied to all California financial institutions and was supported by the Executive Committee in that form. Ms. Merritt acknowledges that the Executive Committee supported the bill, but says the staff's advice to the Commission "is an oversimplification and a distortion of the position of the State Bar." AB 53 was not an omnibus bill with many proposals -- it contained the Multiple-Party Accounts Law and conforming revisions, and nothing else. So the staff is at a loss to understand how it has oversimplified and distorted the Executive Committee's former position.

The Executive Committee objects to the uncodified transitional provision on page 30 of the *Tentative Recommendation* which allows banks and savings and loan associations after the operative date to use forms printed before the operative date. This does not authorize them to print more old forms after the operative date, but merely to use old forms until exhausted. However, the staff has no objection to deleting this provision if the Commission wants. The staff does not think such a deletion would cause banks and savings and loan associations to oppose the proposal.

Respectfully submitted,

Robert J. Murphy III
Staff Counsel

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April 22, 1988

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CA LAW REV. COMMISSION

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California Law Revision Commission
4000 Middlefield Rd., #D-2
Palo Alto, CA 94303-4739

Re: Memorandum 88-6, Multiple Party Accounts

Dear Commissioners:

I am writing this letter on behalf of the Executive Committee of the Estate Planning, Trust and Probate Law Section of the State Bar of California.

At a meeting of the Executive Committee on April 16, 1988, the Committee voted to reiterate its opposition to the tentative recommendation relating to multiple party accounts in the strongest terms. In a previous memorandum, Memorandum 87-90, the staff of the Commission states that when the bill which established the existing California multiple party accounts law was introduced in 1983, the Executive Committee of the Estate Planning, Trust and Probate Law Section of the State Bar supported it in that form. This is an oversimplification and a distortion of the position of the State Bar. While it is true that the Executive Committee supported Assembly Bill 53, together with other legislation introduced that year, it does not necessarily follow that the Executive Committee supported each and every provision contained in Assembly Bill 53. As the Commission knows, frequently the Executive Committee has supported bills even though portions of the bill may be objectionable to the Section. This was the case with AB 53. The Executive Committee wishes to make it quite clear now that if the multiple party accounts recommendation is put into any bill, the Executive Committee will oppose that bill before the legislature.

In answer to the question in the cover memo to Memorandum 88-6, we believe it is entirely appropriate to delete the section regarding the method of having an insolvent estate reach these multiple party account funds.

As I pointed out at a prior meeting of the Commission, the experience of credit unions with the existing multiple party law is not any indication of what the experience will be if the proposal of Memorandum 88-6 is enacted. As was pointed out by the Commission staff, credit unions have developed detailed written materials and procedures for explaining multiple party accounts to their customers. The proposed legislation specifically exempts financial institutions from the necessity of developing or implementing such forms and procedures. The uncodified transitional provision contained on page 30 of the proposed draft is fraud upon the public. To say that the new law applies to such accounts and then to allow financial institutions to continue to use old, inaccurate and misleading forms is nothing less than consumer fraud. What's more, since it is consumer fraud sanctioned by statute, the consumer has no remedy. It is our understanding that the reason financial institutions are not giving any response to the Commission is because that they feel that the new law will exempt them by virtue of this transitional provision. Since they feel that the law doesn't apply to them and they can continue doing what they have done in the past, they don't care what the new law says.

We also think that the arguments put forth for going forward with this legislation have been phrased in a way which is misleading. On the one hand, the Commission was told that these provisions should be expanded because they worked so well in the credit union context. On the other hand, the very factors that allowed the law to work in the credit union context are not required of banks and savings and loans. Since the banks and savings and loans will not have to implement new forms and procedures to explain these provisions to the public, the very factors that have allowed the "trial run" to work will be absent once the scope is expanded.

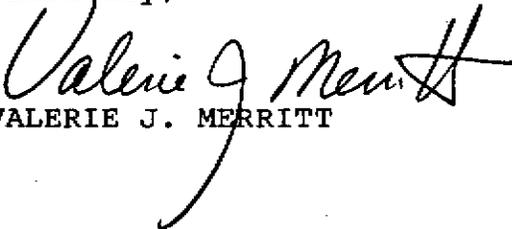
We believe that the passage of this legislation will create problems for consumers throughout the State of California. The banks will not be required to have new forms or procedures.

In prior correspondence with the Commission, we have set forth our opposition to the specific proposals. We still maintain those positions. There is no need to go over them again

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here. The law will be implemented by the lowest paid and least trained members of the banking profession. It's almost a prescription for disaster. We strongly urge the Commission to not expand the application of the Multiple Party Account provisions.

Sincerely,


VALERIE J. MERRITT

VJM:db

cc: James V. Quillinan, Esq.
D. Keith Bilter, Esq.
Irwin D. Goldring, Esq.
Charles Collier, Esq.
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