

## Memorandum 89-55

Subject: Study F-641 - Disposition of Community Property (Draft of Revised Tentative Recommendation)

## BACKGROUND

In September of 1983 the Commission made its *Recommendation Relating to Disposition of Community Property*, 17 Cal. L. Revision Comm'n Reports 269 (1984). The purpose of the recommendation was to rework the statutes governing disposition of community property to bring them into consonance with the modern statutory scheme of equal management and control by married persons.

The Commission recommended, among other changes, that a married person be permitted to make a unilateral gift of community personal property if usual or moderate (under the circumstances of the marriage), and to sell household goods and effects, without the written consent of the person's spouse. The Commission also recommended that there be added to the law a provision enabling a married person to have his or her name added to title to community property.

Senator Lockyer introduced legislation to implement the Commission's recommendation in the 1984 legislative session, but elected to refer the bill to interim study when the Commission on Status of Women indicated it did not believe the bill went far enough. The Senate Judiciary Committee held an interim hearing on the bill in 1984, and the Law Revision Commission decided to hold its recommendation in abeyance while the Commission on Status of Women pursued its ideas.

Legislation sponsored by the Commission on Status of Women, carried by Senator Lockyer, was enacted in 1986 and became operative on July 1, 1987. That legislation details the general fiduciary duty between spouses in the management and control of community property, introduces the concept of "primary" management and control by the operator of a community property business, and provides accounting and damages remedies between the spouses for spousal mismanagement of community property.

There is some overlap between the Commission on Status of Women legislation and the Law Revision Commission recommendations. For example, among the remedies provided in the legislation is the ability of a married person to have his or her name added to title to community property.

The Law Revision Commission in 1988 decided, on a low priority basis, to review this area of law to see what portions of the earlier recommendation could be revived, and to work this into the Commission's agenda when time permits.

Pursuant to this direction the staff in 1988 produced for Commission consideration a memorandum and several supplements on this matter. The staff memorandum concluded that the Commission's basic recommendations are unaffected by the Commission on Status of Women legislation and could be pursued. In addition, the law in this area would benefit from a clean restatement and reorganization.

The Commission commenced, but did not complete, consideration of the staff draft at the July 1988 meeting. The Commission also requested, but did not receive, comments on the staff draft from the State Bar Family Law Section.

The current memorandum supersedes the 1988 memoranda. The staff has incorporated the 1988 memorandum and supplements in a single revised draft that also reflects Commission decisions made at the July 1988 meeting and additional correspondence received since that time. The staff has also noted, where relevant, 1989 legislation (AB 2194--Speier) that passed the Legislature but was vetoed by the Governor on the ground that it would increase litigation.

Our objective is to conclude our preparation of a new tentative recommendation on this subject. It can then be circulated to interested persons and groups for comment, including the Commission on Status of Women and the State Bar Family Law Section.

#### RIGHTS AND OBLIGATIONS ASSOCIATED WITH EMPLOYMENT RELATIONSHIP

Richard S. Kinyon of San Francisco has written to us commenting on issues relating to disposition of community property. Mr. Kinyon observes that it is not clear whether a married person who is employed

has primary management and control of his or her interests in various employee benefits and other rights and obligations with respect to the employment relationship. This may be particularly important where the employee is terminating the relationship and the employer is paying the employee off with respect to all the interests, rights, and obligations.

Mr. Kinyon suggests it may be appropriate to apply the rules governing management of a community property business to the employment relationship. "[I]t seems to me that the considerations relating to the management and control of a community personal property business operated or managed by one of the spouses are the same as to the spouse's employment relationship."

The staff agrees that the law is not clear in this area. We have spoken with our consultant, Professor Bill Reppy, who indicates there has been very little development in the law on this point until now. It has been more or less assumed that the employee spouse has management and control of employment benefits, even though the nonemployee spouse has a community property interest in them. See, e.g., *Marriage of Brown*, 15 Cal. 3d 838, 126 Cal. Rptr. 633, 544 P.2d 561 (1976) (private pension plan). Yet at least one case declares that the nonemployee spouse has the right of equal management and control. *Johns v. Retirement Fund Trust*, 85 Cal. App. 3d 511, 149 Cal. Rptr. 551 (1978) (private pension plan). The conflict between the interests of the employee spouse and nonemployee spouse in selection of pension payment options and beneficiary designations is most apparent at dissolution of marriage, but may arise during marriage as well. The conflict is dealt with in some detail in *In re Marriage of Gillmore*, 29 Cal. 3d 418, 174 Cal. Rptr. 493, 629 P. 2d 1 (1981).

The case of *Hawkins v. Superior Court*, 89 Cal. App. 3d 413, 152 Cal. Rptr. 491 (1979), holds that a husband's sole enrollment, without the agreement or authorization of the wife, in a group medical plan that includes an arbitration clause nonetheless binds the wife. There is contrary authority on this point as well, however.

There may be individual statutes governing the right of the employee spouse acting alone to make employment benefit elections, or requiring the signature of the nonemployee spouse, in either state or federal law. We have not made a search for such statutes, but we are

aware of recently enacted legislation affecting public retirement systems (see Government Code §§ 21209, 31760.3):

The sole purpose of this section is to notify the current spouse of the selection of benefits or change of beneficiary made by a member. Nothing in this section is intended to conflict with community property law. An application for a refund of the member's accumulated contributions, an election of optional settlement, or a change in beneficiary designation shall contain the signature of the current spouse of the member, unless the member declares, in writing under penalty of perjury, that either:

- (a) The member is not married.
- (b) The current spouse has no identifiable community property interest in the benefit.
- (c) The member does not know, and has taken all reasonable steps to determine, the whereabouts of the current spouse.
- (d) The current spouse has been advised of the application and has refused to sign the written acknowledgment.
- (e) The current spouse is incapable of executing the acknowledgment because of incapacitating mental or physical condition.
- (f) The member and the current spouse have executed a marriage settlement agreement pursuant to Chapter 6 (commencing with Section 5133) of Title 8 of Part 5 of Division 4 of the Civil Code which makes the community property law inapplicable to the marriage.

The staff concurs with Mr. Kinyon that this is a matter that needs attention. We have also received a report from Study Team 1 of the State Bar Probate Section that such a study would be worthwhile. However, it is far from simple, and we would be reluctant to act without substantially more research and full consideration of the various alternatives. If the Commission agrees, we will schedule an in-depth memorandum on this for discussion at a future meeting. This could be done as part of the current project, or as a separate project.

#### MANAGEMENT AND CONTROL AFTER DEATH OF SPOUSE

We have also corresponded with Mr. Kinyon concerning the question of the right of a surviving spouse to continue to manage and control community property (or what used to be community property) after the death of the other spouse. Under existing law, if the surviving spouse takes community property by intestate succession or under the decedent's will, the surviving spouse owns the property without the

necessity of administration (unless the surviving spouse elects to administer the property). The surviving spouse is free to manage, deal with, and dispose of the property as the survivor's own.

The problem is that a potential transferee of property from the surviving spouse may be unwilling to enter into the transfer for fear that the surviving spouse does not really have full power to dispose of the property. This can occur where the decedent made a will that gives the decedent's share of the community property to a person other than the surviving spouse. A person who wants to be secure in accepting a transfer may refuse to consummate the transaction until the surviving spouse obtains a court order confirming the surviving spouse's ownership of the property.

To cure this problem, Probate Code Section 13540 provides that after 40 days have elapsed since the death of the decedent, the surviving spouse has "full power" to sell, lease, mortgage, or otherwise deal with and dispose of community real property, "and the right, title, and interest of any grantee, purchaser, encumbrancer, or lessee shall be free of rights of devisees or creditors of the deceased spouse to the same extent as if the property had been owned as the separate property of the surviving spouse." The 40 day delay enables a person claiming an interest in the property to make that claim a matter of record and thereby preclude free transferability by the surviving spouse.

Mr. Kinyon points out that the anomalous result of the law is that the surviving spouse is free to transfer real property of potentially great value but is unable freely to transfer personal property no matter how small in value. As a practical matter, however, this may only be a problem for transfer of personal property of a type where title is evidenced by some sort of documentation, such as cars, stocks, accounts receivable, and the like, that can be quite substantial in value. Most tangible personal property is untitled and of relatively low value, and its transferability by the possessor is not ordinarily questioned.

Where there is documentary evidence of title to personal property, tangible or intangible, existing laws go a considerable way in protecting the security of a transaction involving the property entered

into by the person in whose name title stands. Bona fide purchasers, for example, are ordinarily protected from adverse claims to property transferred by the person in whose name title stands.

A good illustration of this principal can be found in the provisions governing transfer of community property securities. The Corporations Code and the Commercial Code give considerable protection to the parties to a securities transfer. A certificated security is a negotiable instrument under Commercial Code Section 8105. Corporations Code Section 420 immunizes a corporation and its transfer agent and registrar for executing a securities transfer properly indorsed by the person to whom the securities are registered, even if the registration shows the securities are held as community property. Commercial Code Section 8302 provides that the transferee takes a security free of any adverse claim if the transferee is a bona fide purchaser for value in good faith and without notice of any adverse claim.

These provisions would seem to cover the usual securities transfer and would enable the surviving spouse in whose name the securities are registered to dispose of the securities in the ordinary course of business without impediment. These provisions do not, however, cover the situation where the transfer is not an open market transaction and the transferee has actual knowledge of the decedent's will giving the decedent's community property interest in the securities to a person other than the surviving spouse.

Should the law be expanded beyond the Commercial Code and facilitate the transfer in such a case? Mr. Kinyon believes it should, because of the basic uncertainty in the law that is caused by reliance on the bona fide purchaser doctrine. Also, special bona fide purchaser statutes such as that applicable to securities transfers do not cover every type of personal property whose transferability may be impaired.

The public policy question here is the balance between protecting possible devisees of the decedent and enabling property to pass between spouses with minimal delay and difficulty. The staff agrees with Mr. Kinyon that the balance favors effective nonprobate transfers between spouses, at least with regard to securities held in the name of the surviving spouse. A draft statute to implement the concept that a

surviving spouse in whose name securities are registered has full power of disposition of the securities could read:

§ 13545. Securities

13545. (a) After the death of a married person, the surviving spouse, or the legal representative of the surviving spouse, has the same power to manage, pledge, assign, transfer, or otherwise deal with and dispose of community and quasi-community property securities registered in the name of the surviving spouse as the surviving spouse or legal representative would have if the deceased spouse had not died, and the right, title, and interest of any encumbrancer, assignee, transferee, or other person shall be free of the rights of devisees or creditors of the deceased spouse to the same extent as if the property had been owned as the separate property of the surviving spouse.

(b) Nothing in this section affects or limits the liability of a surviving spouse under Sections 13550 to 13553, inclusive.

Comment. Section 13545 is new. It gives the surviving spouse the same power to dispose of community and quasi-community property securities as the surviving spouse had before the death of the decedent. See generally Civ. Code § 5125. The recourse of a devisee of the deceased spouse's interest in securities sold after the deceased spouse's death is against the surviving spouse for the value of that interest. See *Knego v. Grover*, 208 Cal. App. 2d 134, 147-48, 25 Cal. Rptr. 158 (1962).

Section 13545 does not permit the surviving spouse to make a gift of community property securities. See *Morghee v. Rouse*, 224 Cal. App. 2d 745, 37 Cal. Rptr. 112 (1964).

The staff believes this extension of the law is warranted because it is useful to be able to rely on registered ownership and because securities are a special case where it may be necessary to act quickly. Whether the law should be further extended to securities not registered in the name of the surviving spouse, or to other types of personal property, is more problematical in view of the potential harm to rightful successors. Mr. Kinyon argues that if the surviving spouse is not given the express right to deal with all types of community personal property, persons aware of the other spouse's death will be unwilling to deal with the survivor. The lack of authority "may even affect the surviving spouse's power to deal with his or her own separate property unless third parties who know of the other spouse's death can be convinced that the property is in fact the surviving spouse's separate property (which may be very difficult to do)."

Mr. Kinyon is also concerned that the surviving spouse might be absolutely liable for losses suffered by the decedent's successors in interest resulting from the survivor's management and control of the property on the grounds that the survivor had no right to deal with the property unilaterally. He believes the surviving spouse should be expressly given the right to deal with the community personal property subject to the survivor's fiduciary duty to the deceased spouse's successors in interest.

The report we have on this matter from Study Team 1 of the State Bar Probate Section takes the position that consideration should be given to management and control of all types of community personal property, not just securities registered in the name of the surviving spouse. The discussion of the Study Team on this matter is worth noting:

Richard S. Kinyon and other members of the team felt that there should be some legislation on this matter to authorize a surviving spouse to deal with community personal property so that a potential transferee from the surviving spouse will be willing to enter into a transaction with the surviving spouse.

On the other hand, Lynn P. Hart and other members of the team pointed out that the deceased spouse has a right to dispose of his or her one-half of community property to a person other than the surviving spouse, and the rights of the potential transferees of this one-half community property interest are jeopardized if the surviving spouse has unlimited power to act over such property. All members of the Study Team seemed to agree that there were conflicting policies and that some balance or compromise between the two policies was appropriate.

Perhaps an appropriate solution is to require the surviving spouse to wait a period of time, such as 40 days, before he or she can have the power to sell, lease, mortgage or otherwise deal with and dispose of community personal property. Charles Collier suggests that we use 40 days to be consistent with the treatment of community real property. Generally, our team agrees. He further points out that current Sections 13100 and 13151 have adopted a 40-day rule. One member of our Study Team felt that a 40-day wait may be too long in the case of perishable property, or perhaps even depreciating property.

Perhaps also the potential transferees (other than the surviving spouse) of the decedent's one-half of the community personal property should have some way of asserting their rights within 40 days and thereby preventing the surviving

spouse from having absolute power of the property. In the case of real property, the recording of a lis pendens affords this protection.

This is a basic policy question the Commission must decide.

Respectfully submitted,

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10/26/89

REVISED TENTATIVE RECOMMENDATION  
*relating to*  
DISPOSITION OF COMMUNITY PROPERTY

INTRODUCTION

In 1975 California commenced a system of equal management and control of community property by married persons.<sup>1</sup> Under this system, either spouse may manage and control the community property,<sup>2</sup> subject to a number of limitations on the ability of the spouse to control specific types of community property<sup>3</sup> or to dispose of specific types of community property. This recommendation proposes clarifications of the community property law to implement the state policy of equal management and control with regard to disposition of community property.

PERSONAL PROPERTY

The general rule is that either spouse has absolute power of disposition over community personal property.<sup>4</sup> This rule has generally worked well in practice. It is subject to a number of qualifications, however, that need refinement:

(1) Gifts of personal property. Prior to 1891 California followed the Spanish rule that a manager spouse may without consent of the other

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1. 1973 Cal. Stat. ch. 987, operative January 1, 1975. See Prager, *The Persistence of Separate Property Concepts in California's Community Property System, 1849-1974*, 24 U.C.L.A. L. Rev. 1 (1976).

2. Civil Code §§ 5125 (personal property) and 5127 (real property).

3. See, e.g., Civil Code § 5125(d) (community property business operated or managed by spouse); Fin. Code § 851 (community property bank account in name of spouse); Prob. Code § 3051 (where spouse has conservator).

4. Civil Code § 5125(a).

make reasonable gifts of community property.<sup>5</sup> In 1891 the law was revised to require the written consent of the wife to a gift by the husband. The 1891 anti-gift statute<sup>6</sup> became necessary because at that time the husband was considered the sole owner of community property, the wife's interest in the community property being a mere expectancy, and the wife needed the ability to protect the community property from depletion by gifts of the husband.<sup>7</sup>

The reasoning on which the anti-gift legislation was based is no longer applicable. Both spouses own the community property in equal shares,<sup>8</sup> and each may protect the property from dissipation by the other.<sup>9</sup> Moreover, tips given waiters, waitresses, and others, offerings given at church, United Fund contributions, and other gifts are routinely made without thought of written consent by the other spouse. If a case were to arise involving such a gift the courts would undoubtedly find a ground to validate the gift, through ratification, waiver, implied consent, or other means.<sup>10</sup> The law should clearly state the traditional community property rule that a spouse may make a gift of the community property without the written consent of the other spouse if the gift is usual or moderate in the circumstances of the

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5. See, e.g., *Lord v. Hough*, 43 Cal. 581 (1871).

6. The statute is now codified as Civil Code Section 5125(b) and is applicable to gifts of community personal property by either spouse.

7. See discussion in W. Reppy, *Community Property in California* 191 (1980); Prager, *The Persistence of Separate Property Concepts in California's Community Property System, 1849-1975*, 24 U.C.L.A. L. Rev. 1, 49-52 (1976).

8. Civil Code § 5105 (interests of husband and wife during marriage are present, existing, and equal).

9. Cf. Civil Code § 5125 (either spouse has management and control of community personal property).

10. See discussion in Bruch, *Management Powers and Duties Under California's Community Property Laws: Recommendations for Reform*, 34 Hastings L.J. 227, 239-40 (1982).

particular marriage.<sup>11</sup> This is consistent with the law in other community property jurisdictions.<sup>12</sup>

(2) Household furnishings and personal effects. Section 5125(c) of the Civil Code precludes a spouse from selling, conveying, or encumbering community property furniture, furnishings, or fittings of the home, or clothing or wearing apparel of the other spouse or minor children, without the written consent of the other spouse. Like the other statutory limitations on the ability of a spouse to unilaterally dispose of community property, this provision had its origins in a time when the husband had management and control of the community property and the wife needed protection against mismanagement.<sup>13</sup>

The written consent requirement for sale or conveyance of household furnishings and personal effects is unrealistic in an era of garage sales; it is unlikely that written consent will be sought for a sale of used furniture or clothing. The statute that requires written consent in effect permits a spouse to seek relief from a transfer of community personal property in nearly every case. Broadly applied, the statute would make it dangerous for a buyer to purchase any furniture or wearing apparel in a warehouse or shop without inquiring into marital status and authority.<sup>14</sup> This problem is compounded by the fact that a transfer without the written consent of the other spouse is void and not merely voidable. The result is that either spouse can rescind (possibly without the need to make restitution) and the

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11. The requirement of written consent should likewise be inapplicable to a gift of community property between the spouses.

12. See, e.g., La. Civ. Code Ann. art. 2349 (West Supp. 1983); Unif. Marital Prop. Act § 6 (1983).

13. Prager, *The Persistence of Separate Property Concepts in California's Community Property System, 1849-1975*, 24 U.C.L.A. L. Rev. 52-53 (1976).

14. 7 B. Witkin, *Summary of California Law Community Property* § 68, at 5156 (8th ed. 1974).

transfer is not effective as to the transferor's interest even after the marriage has terminated by dissolution or death.<sup>15</sup>

The limitation on disposal of household furnishings and personal effects is unnecessary. Each spouse now has management and control of the community personal property and both should be able to protect their interests. This is particularly true in the case of household furnishings and personal effects--the very items to which the spouses are closest and with which they are most familiar. If one spouse mismanages property of this type, the other spouse will ordinarily be aware of the mismanagement and may take steps to procure compensation and to prevent further mismanagement.

One statutory protection that should be retained is the requirement of joinder for an encumbrance (other than a purchase money encumbrance) of household furnishings. Such a requirement would not affect peoples' ordinary dealing with property and would protect the innocent spouse from a harmful transaction that could occur without the knowledge of the innocent spouse.

**(3) Documentary evidence of title to personal property.** Title to community personal property may be evidenced by documents such as stock certificates or automobile registrations. Where this is the case, the spouse or spouses whose names are on the title documents should join in a transaction affecting the property, notwithstanding the general rule that either spouse alone has absolute power of disposition. This will codify existing practice.

#### SETTING ASIDE A DISPOSITION OF PROPERTY

Despite the language of Civil Code Section 5127 that both spouses "must join" in a transaction involving community real property, this requirement has not been held to invalidate a transaction, except that during marriage it can be avoided by the nonjoining spouse.<sup>16</sup> After

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15. *Dynan v. Gallinati*, 87 Cal. App. 2d 553, 197 P.2d 391 (1948); *W. Reppy, Community Property in California* 197 (1980).

16. During marriage the wife can set aside the husband's conveyance of community real property in toto. E.g., *Britton v. Hammell*, 4 Cal. 2d 690, 52 P.2d 221 (1935); but see *Mitchell v. American Reserve Insurance Co.*, 110 Cal. App. 3d 220, 167 Cal. Rptr. 760 (1980) (setting aside disposition of non-joining spouse's interest in family home during marriage).

termination of marriage by dissolution or death the wife can set aside the husband's conveyance of community real property only as to her one-half interest.<sup>17</sup> The same rules apply to transactions involving community personal property, to transactions involving gifts, and to transactions made for consideration, even though different statutes are involved in each of these situations.<sup>18</sup>

The reasons for these rules are rooted in the history of California community property law. From the beginning of the California community property system in 1849, the husband had the exclusive management and control of the community property and was considered to be the true owner of the property; the wife's interest was a "mere expectancy" to be realized only if she survived the termination of the marriage by death of her husband or by dissolution of marriage.<sup>19</sup> The history of California community property can be viewed as an evolution from this position towards one of equality of the spouses, the major landmarks being the 1927 legislation declaring ownership of community property by the spouses as "present, existing

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17. E.g., *Pretzer v. Pretzer*, 215 Cal. 659, 12 P.2d 429 (1932) (dissolution); *Dargie v. Patterson*, 176 Cal. 714, 169 P. 360 (1917) (death); *Trimble v. Trimble*, 219 Cal. 340, 26 P.2d 477 (1933) (death).

18. Civil Code § 5125; e.g., *Lynn v. Herman*, 72 Cal. App. 2d 614, 165 P.2d 54 (1946) (gift of personal property, wife recovers all during marriage); *Mathews v. Hamburger*, 36 Cal. App. 2d 182, 97 P.2d 465 (1939) (transfer of personal property for consideration, wife recovers all during marriage); *Ballinger v. Ballinger*, 9 Cal. 2d 330, 70 P.2d 629 (1937) (gift of personal property, wife recovers one-half after death of husband); *Gantner v. Johnson*, 274 Cal. App. 2d 869, 79 Cal. Rptr. 381 (1969) (transfer of real and personal property for consideration, wife recovers one-half after death of husband); but see *Dynan v. Gallinatti*, 87 Cal. App. 2d 553, 197 P.2d 391 (1948) (encumbrance of personal property, wife recovers all after death of husband). For a discussion of the cases, see Schwartz, *Gifts of Community Property: Need for Wife's Consent*, 11 U.C.L.A. L. Rev. 26 (1963).

19. *Van Maren v. Johnson*, 15 Cal. 308 (1860).

and equal<sup>20</sup> and the 1975 legislation giving either spouse the management and control of community property.<sup>21</sup> Within this broad progression of the law a series of smaller steps was taken to protect the interest of the wife from erosion by acts of the husband,<sup>22</sup> among them:

1891 Husband prohibited from making a gift of community property without wife's consent.

1901 Husband prohibited from encumbering or selling household furnishings without wife's written consent.

1917 Wife must join in any instrument whereby community realty is encumbered or conveyed.

In historical context it is clear why the courts have interpreted these apparent blanket requirements to provide that the wife may, during marriage, recover all community property conveyed in violation of the statutes but after termination of marriage by death or dissolution may recover only her one-half interest.<sup>23</sup> Since the

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20. Now Civil Code Section 5105.

21. Civil Code §§ 5125, 5127. This history is chronicled in Prager, *The Persistence of Separate Property Concepts in California's Community Property System, 1849-1975*, 24 U.C.L.A. L. Rev. 1 (1976).

22. See Reppy, *Retroactivity of the 1975 California Community Property Reforms*, 48 S. Cal. L. Rev. 977, 1053 (1975).

23. *Britton v. Hammell*, 4 Cal. 2d 690, 52 P.2d 221 (1935), states four reasons for this rule:

(1) If only one-half were recovered and that half were considered community property, the husband would retain control and could repeat his actions until a miniscule amount was left.

(2) If one one-half were recovered and that half were considered separate property of the wife, this would amount to a partition of the community during marriage by arbitrary act of the husband, contrary to public policy that allows division of the community only at termination of the marriage by dissolution or death or during marriage with the consent of both spouses.

(3) The cases allowing the wife to recover only one-half are based on the right of the husband to testamentary disposition of half, hence gifts before death are will substitutes; this reasoning does not apply in an ongoing marriage.

(4) If the wife could not recover the whole property during marriage the husband could impair the wife's right to receive a larger share of the community property at dissolution in case of adultery or extreme cruelty of the husband.

husband was the manager and controller, any conveyance he made was effective to bind his interest; the transaction was not void but only voidable by the non-joining wife. The husband has testamentary power over one-half the community property and is entitled to his share of the community property at dissolution of marriage; therefore, the husband's death or the dissolution of marriage has the effect of ratifying or validating the husband's transaction. The wife can thereafter recover only her one-half interest in the property.

The same basic principles should apply in an era of equal management and control to those types of dispositions for which joinder or consent is required. The law should make clear that a transaction in violation of a joinder or consent requirement is voidable.<sup>24</sup> To give some assurance of transactional security, an action by a spouse to avoid a transaction for failure of joinder or consent should be limited to one year after the spouse had notice (actual or constructive) of the transaction or three years after the transaction was made, whichever occurs first.<sup>25</sup> If the transaction is set aside during marriage, it should be set aside as to the interests of both spouses.<sup>26</sup> If the transaction is set aside after termination of marriage by dissolution

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24. This codifies general California law and overrules the contrary case of *Dynan v. Gallinatti*, 87 Cal. App. 2d 553, 197 P.3d 391 (1948) (disposition void rather than voidable). Codification would not affect the equitable nature of the action to avoid a transaction, and equitable defenses such as estoppel would still be recognized in the action. See, e.g., *Mark v. Title Guar. & Trust Co.*, 122 Cal. App. 301, 9 P.2d 839 (1932).

25. This limitation period is consistent with existing law. See Civil Code § 5127 (one year for action to avoid a disposition of real property); Code Civ. Proc. § 338 (three years for recovery of personal property).

26. This codifies general California law and overrules the contrary case of *Mitchell v. American Reserve Ins. Co.*, 110 Cal. App. 3d 220, 167 Cal. Rptr. 760 (1980) (setting aside disposition of non-joining spouse's interest in family home during marriage). See, e.g., *Andrade Development Co. v. Martin*, 138 Cal. App. 3d 330, 187 Cal. Rptr. 863 (1982) (*Mitchell* case irreconcilable).

or separation or by death, it should ordinarily be set aside only as to the interest of the spouse who did not join in or consent to the transaction. However, the court should have discretion to set aside the transaction as to all interests in special circumstances, such as where it is desirable to award the family home to the spouse who has custody of the children or as a probate homestead. In any case, the court should have authority to fashion an appropriate order that may, for example, require restitution for the person to whom the transaction was made or provide for recovery of the value of the property rather than the property.<sup>27</sup>

In addition to the limitation period for bringing an action to avoid a disposition made without the required joinder or consent, existing law seeks to achieve transactional security by validating a real property disposition by a spouse acting alone in whose name real property title stands, if made to a person in good faith, for value, without knowledge of the marriage relation.<sup>28</sup> The policy that supports this rule applies equally to cases involving personal property where documents appear to vest title in one spouse alone and a disposition of the personal property is made to a bona fide purchaser or encumbrancer for value without knowledge of the marriage relation. In such a situation the bona fide purchaser or encumbrancer who reasonably relied on apparent title should be protected against avoidance of the transaction; this would not preclude the aggrieved

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27. Setting aside the disposition is not the exclusive remedy for a disposition made without the joinder or consent of a spouse. See Civil Code § 5125.1 (interspousal remedies).

28. The disposition is presumed valid in such a situation. Section 5127. It is unclear whether the presumption is conclusive or rebuttable. Compare *Rice v. McCarthy*, 73 Cal. App. 655, 239 P. 56 (1925) (presumption conclusive) with *Mark v. Title Guaranty & Trust Co.*, 122 Cal. App. 301, 9 P.2d 839 (1932). See Marsh, *Property Ownership During Marriage*, in 1 California Family Lawyer § 4.34 (Cal. Cont. Ed. Bar 1961); 2 H. Miller & M. Starr, *Current Law of California Real Estate* § 13:31 (rev. 1977). The language of "presumption" should be replaced with a clear statement of the rule that such a disposition may not be set aside as to a bona fide purchaser or encumbrancer but is subject to remedial action between the spouses.

spouse from seeking recompense in an appropriate case from the other spouse at dissolution of marriage or otherwise.

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The Commission's recommendations would be implemented by enactment of the following measure:

An act to amend Sections 5106 and 5110 of, to add Section 5117 to, to add Chapter 4 (commencing with Section 5125.110) to Title 8 of Part 5 of Division 4 of, and to repeal Chapter 4 (commencing with Section 5125) of Title 8 of Part 5 of Division 4 of, the Civil Code, to amend Section 420 of the Corporations Code, to amend Section 24603 of the Education Code, to amend Section 21210 of the Government Code, to amend Section 10172 of the Insurance Code, and to amend Sections 3002, 3071, 3072, and 3073 of the Probate Code, relating to community property.

*The people of the State of California do enact as follows:*

#### DISPOSITION OF COMMUNITY PROPERTY

#### Civil Code §§ 5125.110-5125.510 (added). Management and control

SEC. . Chapter 4 (commencing with Section 5125.110) is added to Title 8 of Part 5 of Division 4 of the Civil Code to read:

#### CHAPTER 4. MANAGEMENT AND CONTROL

Comment. Chapter 4 (commencing with Section 5125.110) is a recodification of the management and control provisions of former Chapter 4 (commencing with Section 5125). The recodification leaves intact the changes made by 1986 Cal. Stat. ch. 1091. Section 3 of that act states:

SEC. 3. (a) It is the intent of the Legislature in enacting this act to clarify and enhance the duties owed by one spouse to another in managing community property. This act shall not be interpreted or applied to adversely affect rights of any party under existing law other than a spouse. Except as to actions authorized by [Section 5125.410(c)] of the Civil Code, remedies under [Section 5125.410(a)] of the Civil Code apply only to transactions or events occurring on or after July 1, 1987.

(b) It is the intent of this legislation to set a standard with regard to the financial and property rights of the marriage which would promote an equal marital partnership protecting the rights and establishing the responsibilities of both parties equally.

(c) The Legislature intends that the management standard controlling Sections 5103 and [5125.130] of the Civil Code be the standard developed under the case law under Section 5103 of the Civil Code and that this uniform standard, subject to further judicial interpretation, control the two sections. The amendments to [Section 5125.130] of the Civil Code make clear that this standard is not intended to be lower than the good faith in confidential relations standard developed under Section 5103 of the Civil Code. They also make clear that this standard is not intended to be as high as the highest good-faith standard set forth in [former] Title 8 (commencing with Section 2215) of Part 4 of Division 3 of the Civil Code. The amendments also extend the case law by making express an obligation to disclose assets and obligations upon request prior to marital separation and by expressly maintaining the standard of care that controls management of community property prior to separation to the period after separation or dissolution of marriage so long as the property remains undivided by the parties or a court.

#### Article 1. General Provisions

##### § 5125.110. Definitions

5125.110. Unless the provision or context otherwise requires, as used in this chapter:

(a) "Disposition" includes, but is not limited to, a transfer, conveyance, sale, gift, encumbrance, lease, or exchange.

(b) "Management and control" includes disposition.

(c) "Property" means real and personal property and any interest therein.

(d) "Record title", as it relates to personal property, means:

(1) Documentary evidence of title, the delivery of which is necessary to transfer title to the property.

(2) In the case of an uncertificated security, registration of the security as reflected in the records of the issuer.

Comment. Subdivision (a) of Section 5125.110 makes clear that the term "disposition" is used in a broad sense and is not limited to a sale of the property. Subdivision (b) is included for drafting convenience. Subdivision (c) reflects the fact that real and personal

property are treated the same in this chapter, except in special cases. A reference to community property means any interest in the property, including the interests of either spouse in the property.

The reference in subdivision (d)(1) to documentary evidence of title, the delivery of which is necessary to transfer legal title to property, includes (1) a certificated security and (2) a certificate of title or registration issued by a governmental agency, such as for a motor vehicle, vessel, or aircraft.

*Note.* Earlier drafts referred to "record title or other documentary evidence of title". As the Corporations Committee of the State Bar Business Law Section points out to us, such an undefined phrase could be read over-broadly to include bills of sale and similar documents, even though such writings are not title documents. Any piece of non-title paper could be construed to be "documentary evidence of title", resulting in a joinder requirement contrary to the general purpose of the community property disposition rules. Consequently, we have refined the provision in the current draft.

§ 5125.120. Either spouse has management and control

5125.120. Except as otherwise provided by statute, either spouse has the management and control of the community property, whenever acquired.

*Comment.* Section 5125.120 continues the substance of the first portions of former Sections 5125(a) (personal property) and 5127 (real property). It applies to all community property, whether acquired before or on or after January 1, 1975, the date of inception of equal management and control. This chapter contains exceptions to and limitations on the rule of Section 5125.120. See also Section 5110.150 (management and control of community property by trustee), Fin. Code § 851 (management and control of bank account by spouse in whose name account stands). Exceptions and limitations may also be found in a marital property agreement between the spouses. See, e.g., Section 5312 (premarital agreement).

§ 5125.130. Duty of good faith

5125.130. (a) Each spouse shall act in good faith with respect to the other spouse in the management and control of the community property in accordance with the general rules which control the actions of persons having relationships of personal confidence as specified in Section 5103, until such time as the property has been divided by the parties or by a court.

(b) The duty provided in this section includes the obligation to make full disclosure to the other spouse of the existence of assets in which the community has an interest and debts for which the community may be liable, upon request.

(c) The case law defining the standard of care applicable to Section 5103, but not the case law applicable to a trustee's duties, applies to this section. In no event shall this standard be interpreted to be less than that of good faith in confidential relations nor as high as that established by the law applicable to a trustee's duties. For purposes of this subdivision, a trustee's duties means the duties stated in former Title 8 (commencing with Section 2215) of Part 4 of Division 3 of this code (as repealed by Chapter 820 of the Statutes of 1986) or in Division 9 (commencing with Section 15000) of the Probate Code.

Comment. Section 5125.130 continues the substance of former Section 5125(e). Special provisions of this chapter relating to management and control are subject to the overriding duty of good faith, which applies notwithstanding any implication in any provision of this chapter to the contrary. See, e.g., Section 5125.210 and Comment thereto (power of disposition absolute); see also Section 5125.110(b) ("management and control" includes disposition).

Note.

Subdivisions (a) and (c) state the duty of good faith between spouses in the management and control of community property. Jan Gabrielson of Los Angeles has written to the Commission that this standard is very difficult to figure out as it is presently worded with its series of cross references. "I understand from working with the Commission and the original Bruch Report that the purpose is to impose the highest possible standard short of imposing liability for bad investments, but most readers will have a hard time figuring that out. Perhaps Section 5125(e) should be revised to spell out here and now what the duty of good faith consists of in the context of managing community property, instead of leaving the matter to a convoluted body of case law that few people can understand."

AB 2194 would have done this by replacing the duty of good faith between spouses with a higher standard applicable to a fiduciary. The Governor vetoed the bill, stating that:

*I am concerned that, to the extent that an investment made during a marriage lost money and was one that a prudent fiduciary would not have made, this bill would provide a forum to reopen virtually all of those transactions. Since spouses regularly make investments that fiduciaries would never make, and because the disillusionment and distrust engendered by marital breakup often leads individuals to expand litigation beyond reasonable limits, obvious problems are created.*

*This whole area is currently hotly debated in the legislature, the courts, and now the Governor's office. The staff believes it is premature for the Commission to become involved in this issue.*

Under subdivision (a), the duty of good faith continues until the property is divided. Mr. Gabrielson believes that this does not resolve the issue of "whether and how the duty of good faith changes after the parties separate and go to war." The staff notes that it was the intent of the Legislature expressly to extend the good faith standard "to the period after separation or dissolution of marriage so long as the property remains undivided by the parties or a court." See the Comment to this chapter.

Subdivision (b) makes clear that a spouse must disclose the existence of assets and liabilities if asked. Mr. Gabrielson states that "It is anyone's guess whether there is a duty to disclose facts affecting the value of assets or one spouse's opinion as to the value of assets." AB 2194 would have elaborated this provision to require that the duty of spouses to each other includes "equal access to all information, records, and books that pertain to the value and character" of the assets and debts.

This provision appears to have been an additional cause of the Governor's veto. The provision had been opposed in the legislature by Justice Donald King, who believed the provision would result in a number of property settlements being set aside due to lack of full disclosure. Both Justice King and the California Judges Association suggested that the time in which a property settlement would be subject to set aside should be limited to six months. The proponents of the bill argued that actually there would probably be fewer settlements set aside due to the enormous pressure to fully disclose all assets at the time of settlement. In vetoing the bill, the Governor said:

The finality of a judgment is a very important aspect of family law for both spouses, because of the litigation expenses and the emotional content of such proceedings. Currently, it is fairly easy to set aside a judgment incorporating a marital settlement agreement of the parties during the first six months after issuance of that judgment, but much more difficult thereafter. This bill could severely impact the doctrine of finality by allowing either spouse, even many years later, to appeal to a court to set aside a judgment and marital settlement agreement, based upon a claimed breach of fiduciary duty.

§ 5125.140. Where spouse has conservator or lacks legal capacity

5125.140. Where a spouse either has a conservator of the estate or lacks legal capacity to manage and control community property, the procedure for management and control of the community property is that prescribed in Part 6 (commencing with Section 3000) of Division 4 of the Probate Code.

Comment. Section 5125.140 continues subdivision (a) of former Section 5128. Subdivisions (b) and (c) of former Section 5128 were elaborations of subdivision (a) and are not continued because they are unnecessary. See Section 5125.110(b) ("management and control" includes disposition).

§ 5125.150. Agency

5125.150. A spouse may act by duly authorized agent in the management and control of community property, and may authorize the other spouse to act as agent.

Comment. Section 5125.150 generalizes a provision of former Section 5127 (real property joinder requirement may be satisfied by duly authorized agent).

Article 2. Disposition of Community Property

§ 5125.210. Power of disposition absolute

5125.210. (a) Subject to the limitations provided in this article, each spouse has absolute power of disposition, other than testamentary, of community property of which that spouse has management and control, and may make a disposition of the property without the joinder or consent of the other spouse.

(b) Subject to Section 5125.220, the limitations provided in this article apply whether or not title to the property is held in the name of only one spouse.

(c) The limitations provided in this article do not apply to a disposition of community property between the spouses.

Comment. Subdivision (a) of Section 5125.210 continues the substance of the last portion of former Section 5125(a), which gave either spouse absolute power of disposition of community personal property. Subdivision (a) is subject to exceptions stated in this article, including the requirement of joinder for disposition of community real property. Section 5125.230 (disposition of real property). In addition to the specific limitations on the power of disposition provided in this article, a spouse is subject to the overriding requirement of good faith in the management and control of the community property. Section 5125.130. For the power of testamentary disposition of community property, see Probate Code Section 6101.

Subdivision (b) is new. It parallels a provision of Section 5125.340(a) (written notice of disposition of business).

Subdivision (c) is drawn from former Section 5127. The validity and effect of a disposition between spouses is governed by law other than this article. The limitations in this article may also be subject to a marital property agreement.

§ 5125.220. Person in whose name personal property title stands must join

5125.220. (a) Except as provided in subdivision (b), each spouse in whose name record title to community personal property is held must join in a disposition of the property.

(b) If record title to community personal property is held in the names of both spouses in the alternative, either spouse may make a disposition of the property without the joinder of the other spouse.

Comment. Subdivision (a) of Section 5125.220 codifies practice under former law. Subdivision (a) governs community property, including community property in joint tenancy form. It should be noted that a married person may have his or her name added to community property title. Section 5125.430.

Subdivision (b) makes clear that the joinder requirement of subdivision (a) is subject to an express direction in the title of alternative rights. This provision does not extend to community real property.

The application of the term "record title" to community personal property is defined in Section 5125.110 (definitions).

§ 5125.230. Disposition of real property

5125.230. Both spouses must join in a disposition of community real property.

Comment. Section 5125.230 continues the substance of a portion of former Section 5127.

§ 5125.240. Gifts

5125.240. (a) Except as provided in subdivision (b), a spouse may not make a gift of community personal property or make a disposition of the property without a valuable consideration, without the written consent of the other spouse.

(b) A spouse may make a gift of community personal property, or make a disposition of community personal property without a valuable consideration, without the written consent of the other spouse, if the gift or disposition is usual or moderate, taking into account the circumstances of the marriage.

Comment. Subdivision (a) of Section 5125.240 continues the substance of former Section 5125(b).

Subdivision (b) is new. It is drawn from comparable provisions in other jurisdictions and is consistent with the traditional community property rule applicable in California prior to 1891. See, e.g., La.

Civ. Code Ann. art. 2349 (West Supp. 1983) (usual or moderate gifts of value commensurate with economic status of spouses); Lord v. Hough, 43 Cal. 581 (1872) (manager spouse may without consent of the other make reasonable gifts of community property). In making a determination after the death of the donor spouse whether a gift is usual or moderate the court should take into account such factors as amounts received by the other spouse by will, succession, gift, or other disposition, including insurance proceeds, joint tenancy, and inter vivos and testamentary trusts, and any special or unique character of the community personal property given.

Note. AB 2194 would have changed the reference in subdivision (a) from a disposition of property "without a valuable consideration" to a disposition of property "for an amount substantially less than its value." Despite surface appearances, these standards are not the same, and the change would have altered existing California law, which equates "valuable consideration" with "good consideration" (Civil Code § 1605). Thus under existing law a spouse may make a disposition of community property as part of a profit-sharing agreement, and the disposition would not violate the gift statute, even though there was not necessarily a guaranteed return on the property of an amount substantially equal to the value of the property. Bank of California v. Connolly, 36 Cal. App. 3d 350, 111 Cal. Rptr. 468 (1973). Evidently, this attempted change in the gift standard was intended to correspond to the change in the general management standard from good faith to a fiduciary standard. The staff does not believe that it is proper to use the gift statute as a means of imposing a management and control standard, and would not incorporate the proposed AB 2194 change.

The concept of written consent in the marital context is unrealistic. Perhaps oral consent should be sufficient, with the burden of proof on the spouse making the transfer. AB 2194 would have addressed this problem in an analogous way by excepting "gifts mutually given by both spouses to third parties." The staff would incorporate in the draft both an oral consent and a mutual gift exception. (AB 2194 would also except gifts between spouses; our present draft accomplishes this in Section 5125.210(c).)

The standard in subdivision (b) is flexible. Flexibility requires lack of certainty. The Commission has made a judgment that flexibility is better than an arbitrary limit of, say, \$500 (as provided in the Uniform Marital Property Act).

At the September 1988 meeting the Commission requested research on the issue whether a gift of community property made by one spouse without the written consent of the other spouse may be revoked by the nonconsenting spouse. There are a number of cases on this point that hold clearly that the nonconsenting spouse may revoke the gift in its entirety during marriage and may revoke the gift as to that spouse's one-half interest after the death of the donor spouse. See, e.g., Britton v. Hammell, 4 Cal. 2d 690, 52 P. 2d 221 (1935) (revocation of entire gift of community real property during marriage); Lynn v. Herman, 72 Cal. App. 2d 614, 165 P. 2d 54 (1946) (revocation of entire gift of community personal property automobile during marriage); Ballinger v. Ballinger, 9 Cal. 2d 330, 70 P. 2d 629 (1937) (recovery of one-half of gift of community property stock after death); Trimble v. Trimble, 219 Cal. 340, 26 P.2d 477 (1933) (recovery of one-half of gift

of community real property after death). These remedies are subject to the ordinary statutes of limitation for recovery of property--three years in the case of personal property, five years in the case of real property. *Spreckels v. Spreckels*, 172 Cal. 775, 158 Pac. 537 (1916); Code Civ. Proc. §§ 318, 338.

The draft of the tentative recommendation affects these principles in several ways. First, subdivision (b) of Section 5125.240 validates a gift made without the written consent of the other spouse if the gift is "usual or moderate" taking into account the circumstances of the marriage. Second, the remedies provided in Section 5125.270 for the nonconsenting spouse are modified so that (1) a good faith donee is given some protection, (2) the statute of limitations for rescission runs within one year after the nonconsenting spouse had knowledge of the gift (or three years after the gift was made, whichever is earlier), and (3) the court may subject the rescission remedy to terms and conditions, or apply an alternate remedy, if it appears equitable taking into account the rights of all the parties.

AB 2194 would have provided a flat rule that in the case of an illegal gift of community property, any recovery may be only against the spouse who makes the gift. Such a rule is obviously simpler and more protective of security of transactions; whether it is correct in relegating the injured spouse to remedies against the other spouse is debatable, however. It would certainly encourage spouses acting in bad faith (e.g. when the marriage is heading toward collapse) to impoverish the community with impunity by making gifts to trusted friends and relatives.

#### § 5125.250. Disposition of family dwelling

5125.250. A spouse may not make a disposition of a community personal property family dwelling without the written consent of the other spouse.

Comment. Section 5125.250 continues the substance of a portion of former Section 5125(c).

Note. We're talking about a mobilehome here. Joinder, rather than consent, would be more appropriate in this context.

#### § 5125.260. Encumbrance of household goods

5125.260. (a) A spouse may not create a security interest in community property furniture, furnishings or fittings of the home, or clothing or wearing apparel of the other spouse or minor children, without the joinder of the other spouse.

(b) Subdivision (a) does not apply to the creation of a purchase money security interest.

Comment. Section 5125.260 supersedes former Section 5125(c). Written consent is no longer required for a sale of community property household furnishings and clothing.

§ 5125.270. Avoiding and setting aside disposition

5125.270. (a) A disposition of community property made by a spouse without the joinder or consent required by this article is voidable upon order of the court in an action commenced by the other spouse before the earlier of the following times:

(1) One year after the spouse who did not join or consent had actual or constructive notice of the disposition.

(2) Three years after the disposition was made.

(b) Subject to such terms and conditions or other remedy as appears equitable under the circumstances of the case, taking into account the rights of all the parties:

(1) A court order pursuant to subdivision (a) made during marriage shall set aside the disposition of community property as to the interests of both spouses.

(2) A court order pursuant to subdivision (a) made after termination of marriage by dissolution or legal separation or by death shall set aside the disposition of community property as to the interest of the spouse who did not join or consent and may, in the discretion of the court, set aside the disposition as to the interests of both spouses.

(c) If record title is held only in the name of one spouse, the disposition of community property by the spouse in whose name title is held is not voidable pursuant to this section if made to a person in good faith for value without knowledge of the marriage relation.

(d) Nothing in this section affects any remedy a spouse may have against the other spouse for a disposition of community property made without the joinder or consent required by this article.

Comment. Subdivision (a) of Section 5125.270 makes clear that a disposition in violation of the joinder and consent requirements of this article is voidable rather than void. This codifies general California law and overrules the contrary case of *Dynan v. Gallinatti*, 87 Cal. App. 2d 553, 197 P.2d 391 (1948) (disposition void). Although subdivision (a) codifies the action to avoid a disposition, the action remains equitable in nature and equitable defenses such as estoppel may still be recognized. See, e.g., *Mark v. Title Guar. & Trust Co.*, 122

Cal. App. 301, 9 P.2d 839 (1932). Subdivision (a) also imposes a statutory limitation period on an action to avoid the disposition, consistent with prior law. See former Section 5127 (one year for action to avoid a disposition of real property); Code Civ. Proc. § 338 (three years for recovery of personal property).

Subdivision (b) codifies general California law that a disposition avoided during marriage must be set aside as to the interests of both spouses, not just as to the interest of the non-joining or non-consenting spouse. See, e.g., *Britton v. Hammell*, 4 Cal. 2d 690, 52 P.2d 221 (1935) (community real property); *Lynn v. Herman*, 72 Cal. App. 2d 614, 165 P.2d 54 (1946) (gift); *Mathews v. Hamburger*, 36 Cal. App. 2d 182, 97 P.2d 465 (1939) (personal property); *Andrade Development Co. v. Martin*, 138 Cal. App. 3d 330, 187 Cal. Rptr. 863 (1982) (contract to convey real property). This overrules *Mitchell v. American Reserve Ins. Co.*, 110 Cal. App. 3d 220, 167 Cal. Rptr. 760 (1980) (setting aside disposition of non-joining spouse's interest in family home during marriage). Where a disposition is set aside after termination of marriage by dissolution, separation, or death, the court will in the usual case set aside the disposition only as to the non-joining or non-consenting spouse so as to effectuate the disposition as to the interest of the spouse who made the disposition. See, e.g., *Pretzer v. Pretzer*, 215 Cal. 659, 12 P.2d 429 (1932) (community real property after dissolution); *Trimble v. Trimble*, 219 Cal. 340, 26 P.2d 477 (1933) (community real property after death); *Ballinger v. Ballinger*, 9 Cal.2d 330, 70 P.2d 629 (1937) (community personal property after death); *Gantner v. Johnson*, 274 Cal. App. 2d 869, 79 Cal. Rptr. 381 (1969) (community real and personal property after death). However, paragraph (2) of subdivision (b) does not mandate this result and recovery of the whole property may be proper in a case, for example, where it is desirable to award property such as a family home to the spouse who has custody of the children or as a probate homestead.

Under subdivision (b) the court has discretion to fashion an appropriate order, depending on the circumstances of the case. The order may, for example, require restitution for the person to whom the disposition was made, or provide for recovery of the value of the property instead of the property.

Subdivision (c) supersedes the presumption of validity of former Section 5127 and extends it to personal as well as real property. Subdivision (c) adopts the construction of this provision given by *Rice v. McCarthy*, 73 Cal. App. 655, 239 P. 56 (1925).

Subdivision (d) makes clear that this section does not provide the exclusive remedy where a spouse has made a disposition of community property without the joinder or consent of the other spouse. It may be proper in a dissolution case, for example, simply to allow one spouse an offset for the value of the property disposed of out of the share of the other spouse, or to give the spouse a right of reimbursement. See also Article 4 (commencing with Section 5125.410) (interspousal remedies).

*Note.* The Comment to subdivision (b) indicates that restitution may be required where a disposition is voided. Should restitution be required in every case? This issue was raised at the interim hearing.

Article 3. Community Personal Property Business

§ 5125.310. Community personal property business defined

5125.310. As used in this article, "community personal property business" means a business or an interest in a business that is all or substantially all community personal property, including personal property used for agricultural purposes.

Comment. Section 5125.310 continues the substance of portions of the first and second sentences of former Section 5125(d).

§ 5125.320. Primary management and control

5125.320. A spouse who is operating or managing a community personal property business has the primary management and control of the business.

Comment. Section 5125.320 continues the substance of a portion of the first sentence of former Section 5125(d).

§ 5125.330. Business transactions

5125.330. (a) Subject to the limitations provided in Article 2 (commencing with Section 5125.210), a spouse having primary management and control of a community personal property business may act alone in all transactions.

(b) Notwithstanding Section 5125.230, a spouse having primary management and control of a community personal property business may transfer title to the lessee's interest in any lease of real property related to the business without the joinder or consent of the other spouse provided that the lease agreement does not identify the other spouse as a lessee.

Comment. Subdivision (a) of Section 5125.330 continues the substance of a portion of the second sentence of former Section 5125(d). The limitations provided in Article 2 include Sections 5125.230 (disposition of real property), 5125.240 (gifts), 5125.250 (disposition of family dwelling), and 5125.260 (encumbrance of household goods).

Subdivision (b) is new. The existence of a real property lease does not have the effect of converting a community personal property business into a community real property business.

Note. Subdivision (b) has been added at the suggestion of the Corporations Committee of the State Bar Business Law Section, which points out subdivision (a) may be a problem where the managing spouse

*is selling a small business that includes a leasehold interest in real property. The existence of the lease should not have the effect of exposing the transaction to the limitations on disposition of real property, with the attendant title problems and lack of certainty for a transferee of the business.*

§ 5125.340. Written notice of disposition of business

5125.340. (a) A spouse having primary management and control of a community personal property business shall give prior written notice to the other spouse of any transaction that involves a disposition of all or substantially all of the personal property used in the operation of the business, whether or not title to that property is held in the name of only one spouse.

(b) Subdivision (a) does not apply to any of the following:

(1) A change of the form of the business.

(2) A transaction as to which written notice is prohibited by the law otherwise applicable to the transaction.

(c) Remedies for the failure by a managing spouse to give prior written notice as required by this section are only as specified in Article 4 (commencing with Section 5125.410). A failure to give prior written notice shall not adversely affect the validity of a transaction nor of any interest transferred.

Comment. Section 5125.340 continues the substance of a portion of the second sentence, and the third, fourth, fifth, and sixth sentences, of former Section 5125(d). See also Section 5125.110(a) ("disposition" defined).

Article 4. Interspousal Remedies

§ 5125.410. Claim for breach of duty

5125.410. (a) A spouse has a claim against the other spouse for a breach of the duty imposed by this chapter that results in substantial impairment to the claimant spouse's present undivided one-half interest in the community estate.

(b) Except as provided in subdivision (c), any action under this section shall be commenced within three years of the date the claimant spouse had actual knowledge that the transaction or event for which the remedy is being sought occurred.

(c) The time limitations provided in subdivision (b) do not apply to an action brought under this section on the death of a spouse or in conjunction with a proceeding for legal separation, dissolution of marriage, or nullity.

(d) The defense of laches may be raised in any action brought under this section.

(e) Except as to actions authorized by subdivision (c), remedies under this section apply only to transactions or events occurring on or after July 1, 1987.

Comment. Subdivision (a) of Section 5125.410 continues the substance of former Section 5125.1(a). Subdivisions (b)-(e) continue the substance of former Section 5125.1(d).

Note. AB 2194 would have revised subdivision (a) to state that "substantial impairment" includes, but is not limited to, "a single transaction or a pattern or series of transactions, which transaction or transactions would cause or have caused a detrimental impact" to the other spouse's interest. The staff cannot tell from the language of this revision whether it is intended to loosen the "substantial impairment" standard to one of "detrimental impact."

§ 5125.420. Account and court determination

5125.420. A court may order an account of the property and obligations of the spouses and may determine the rights of ownership in, the beneficial enjoyment of, or access to, community property, and the classification of all property of the spouses.

Comment. Section 5125.420. Section 5125.420 continues the substance of former Section 5125.1(b), substituting "spouses" for "parties to a marriage."

§ 5125.430. Adding name to title to property

5125.430. A court may order that the name of a spouse shall be added to community property held in the name of the other spouse alone or that the title of community property held in some other title form shall be reformed to reflect its community character, except with respect to any of the following:

(a) A partnership interest held by the other spouse as a general partner.

(b) An interest in a professional corporation or professional association.

(c) An asset of an unincorporated business if the other spouse is the only spouse involved in operating and managing the business.

(d) Any other property, if the order would adversely affect the rights of a third person.

Comment. Section 5125.430 continues the substance of former Section 5125.1(c). Where title to property stands in the names of both spouses, both must join in a disposition. Section 5125.220 (person in whose name title stands must join).

§ 5125.440. When consent requirement may be dispensed with

5125.440. In any transaction affecting community property in which the consent of both spouses is required, the court may, on the motion of a spouse, dispense with the requirement of the other spouse's consent if both of the following requirements are met:

(a) The proposed transaction is in the best interest of the community.

(b) Consent has been arbitrarily refused or cannot be obtained due to the physical incapacity, mental incapacity, or prolonged absence of the nonconsenting spouse.

Comment. Section 5125.440 continues the substance of former Section 5125.1(e).

Note. Apparently this section may be used either prospectively to excuse a consent requirement or retrospectively to validate a disposition made without a required consent, although we have found no legislative history on this. Perhaps a note in the Comment is appropriate.

*This section arguably should extend to joinder as well as consent requirements.*

*There is already in existence a fairly detailed scheme in the Probate Code for obtaining court authority to act for a legally incapacitated spouse. Cf. Section 5125.140. That scheme answers many questions not answered by this section, such as the proper court, the notice required, etc. This section is broader in its coverage, however, applying to prolonged absence and to arbitrary refusal as well as to incapacity. The substance of this section might be worked into the Probate Code scheme.*

§ 5125.450. Procedural aspects of action under this article

5125.450. An action may be brought under this article without filing a proceeding for dissolution of marriage, legal separation, or nullity, or may be brought in conjunction with the proceeding or upon the death of a spouse.

Comment. Section 5125.450 continues the substance of former Section 5125.1(f).

Note. Jan C. Gabrielson of Los Angeles writes us, "The availability of pendente lite relief is another unaddressed issue....If a party files an action and has to wait five years for a trial, these statutes may not be much help." It would be possible to extend Section 4359 (authority of court to make *ex parte* restraining orders) to apply to actions under this article as well as actions for dissolution, if that is desired.

## Article 5. Transitional Provisions

### § 5125.510. Transitional provisions

5125.510. (a) This chapter applies to a disposition of community property made on or after January 1, 1991, regardless of whether the property was acquired before, on, or after January 1, 1991.

(b) A disposition of community property made before January 1, 1991, is governed by the law applicable at the time of the disposition.

(c) A reference to, or an incorporation by reference of, former Section 5125, 5125.1, or 5127 in a trust or other instrument executed before January 1, 1991, shall, on or after January 1, 1991, be deemed to refer to or incorporate this chapter.

Comment. Section 5125.510 makes clear that enactment of this chapter is not intended to validate or invalidate any disposition made before its enactment; such a disposition is governed by former law.

## CONFORMING CHANGES AND REPEALS

### Civil Code § 5106 (technical amendment). Employee benefit or savings plan

SEC. . Section 5106 of the Civil Code is amended to read:

5106. ~~(a) Notwithstanding the provisions of Section 5105 and 5125, whenever any other provision of this title;~~

(a) Whenever payment or refund is made to a participant or his the participant's beneficiary or estate pursuant to a written employee benefit plan governed by the Employee Retirement Income Security Act of 1974 (P.L. 93-406), as amended, such the payment or refund shall fully discharge the employer and any administrator, fiduciary or insurance company making such the payment or refund from all adverse claims

thereto unless, before such the payment or refund is made, the administrator of such the plan has received at its principal place of business within this state, written notice by or on behalf of some other person that such the other person claims to be entitled to such the payment or refund or some part thereof. Nothing ~~contained~~ in this ~~section shall affect~~ subdivision affects any claim or right to any such the payment or refund or part thereof as between all persons other than the employer and the fiduciary or insurance company making such the payment or refund. The terms "participant", "beneficiary", "employee benefit plan", "employer", "fiduciary" and "administrator" shall have the same meaning as provided in Section 3 of the Employee Retirement Income Security Act of 1974 (P.L. 93-406), as amended.

(b) ~~Notwithstanding the provisions of Sections 5105 and 5125,~~ whenever Whenever payment or refund is made to an employee, former employee or ~~his~~ the beneficiary or estate of the employee or former employee pursuant to a written retirement, death or other employee benefit plan or savings plan, other than a plan governed by the Employee Retirement Income Security Act of 1974 (P.L. 93-406), as amended, such the payment or refund shall fully discharge the employer and any trustee or insurance company making such the payment or refund from all adverse claims thereto unless, before such the payment or refund is made, the employer or former employer has received at its principal place of business within this state, written notice by or on behalf of some other person that such the other person claims to be entitled to such the payment or refund or some part thereof. Nothing ~~contained~~ in this ~~section shall affect~~ subdivision affects any claim or right to any ~~such~~ the payment or refund or part thereof as between all persons other than the employer and the trustee or insurance company making such the payment or refund.

Comment. The amendments to Section 5106 are technical.

Civil Code § 5110 (amended). Community property

SEC. . Section 5110 of the Civil Code is amended to read:

5110. Except as provided in ~~Sections 5107, 5108, and 5126~~ this chapter, all real property situated in this state and all personal property wherever situated acquired during the marriage by a married

person while domiciled in this state, and property held in trust pursuant to Section 5110.150, is community property; but whenever any real or personal property, or any interest therein or encumbrance thereon, is acquired prior to January 1, 1975, by a married woman by an instrument in writing, the presumption is that the same is her separate property, and if so acquired by the married woman and any other person the presumption is that she takes the part acquired by her, as tenant in common, unless a different intention is expressed in the instrument; except, that when any of the property is acquired by husband and wife by an instrument in which they are described as husband and wife, unless a different intention is expressed in the instrument, the presumption is that the property is the community property of the husband and wife. The presumptions in this section mentioned are conclusive in favor of any person dealing in good faith and for a valuable consideration with a married woman or her legal representatives or successors in interest, and regardless of any change in her marital status after acquisition of the property.

~~In cases where a married woman has conveyed, or shall hereafter convey, real property which she acquired prior to May 19, 1889, the husband, or his heirs or assigns, of the married woman, shall be barred from commencing or maintaining any action to show that the real property was community property, or to recover the real property from and after one year from the filing for record in the recorder's office of the conveyances, respectively.~~

As used in this section, personal property does not include and real property does include leasehold interests in real property.

Comment. The first paragraph of Section 5110 is amended to correct section references. Former Section 5126 is now Section 5117. This chapter also includes other exceptions to the first portion of the first sentence of Section 5110. See, e.g., Sections 5110.710 (transmutation), 5118 (earnings and accumulations while separate and apart), 5119 (earnings and accumulations after legal separation).

The second paragraph is deleted because it is obsolete. The likelihood that the paragraph could apply to a current transfer is extraordinarily remote, and in any case general statutes of limitation otherwise applicable generally cover the situation addressed by this paragraph. See, e.g., Code Civ. Proc. §§ 315-330 (time of commencing actions for recovery of real property); former Civil Code § 5127 (bona fide purchaser protection for persons who take title from a married person).

Note. Pursuant to the Commission's direction, the staff has made inquiry of the title insurance industry whether they would have any problems with deletion of the second paragraph of this section. Larry Green of the California Land Title Association has informed the staff that they would have no problem with this deletion.

Civil Code § 5117 (added). Personal injury damage awards

SEC. . Section 5117 is added to the Civil Code to read:

5117. (a) All money or other property received or to be received by a person in satisfaction of a judgment for damages for personal injuries or pursuant to an agreement for the settlement or compromise of a claim for such damages is the separate property of the injured person if the cause of action for such damages arose as follows:

(1) After the rendition of a decree of legal separation or a judgment of dissolution of a marriage.

(2) While either spouse, if he or she is the injured person, is living separate from the other spouse.

This subdivision shall apply retroactively to any case where the property rights of the marriage have not been finally adjudicated by a decree of dissolution or separation.

(b) Notwithstanding subdivision (a), if the spouse of the injured person has paid expenses by reason of the spouse's personal injuries from his or her separate property or from the community property, he or she is entitled to reimbursement of his separate property or the community property for such expenses from the separate property received by his or her spouse under subdivision (a).

(c) Notwithstanding subdivision (a), if one spouse has a cause of action against the other spouse which arose during the marriage of the parties, money or property paid or to be paid by or on behalf of a party to his or her spouse of that marriage in satisfaction of a judgment for damages for personal injuries to such spouse or pursuant to an agreement for the settlement or compromise of a claim for such damages is the separate property of the injured spouse.

Comment. Section 5117 renumbers former Section 5126 without other change.

Civil Code §§ 5125-5128 (repealed). Management and control of marital property

SEC. . Chapter 4 (commencing with Section 5125) of Title 8 of Part 5 of Division 4 of the Civil Code is repealed.

*Note.* The text of the repealed sections, with Comments indicating their disposition, is set out below.

~~CHAPTER 4.--MANAGEMENT AND CONTROL OF MARITAL PROPERTY~~

§ 5125 (repealed). Community personal property

~~5125. (a) Except as provided in subdivisions (b), (c), and (d) and Sections 5110, 150 and 5128, either spouse has the management and control of the community personal property, whether acquired prior to or on or after January 1, 1975, with like absolute power of disposition, other than testamentary, as the spouse has of the separate estate of the spouse.~~

~~(b) A spouse may not make a gift of community personal property, or dispose of community personal property without a valuable consideration, without the written consent of the other spouse.~~

~~(c) A spouse may not sell, convey, or encumber community personal property used as the family dwelling, or the furniture, furnishings, or fittings of the home, or the clothing or wearing apparel of the other spouse or minor children which is community personal property, without the written consent of the other spouse.~~

~~(d) Except as provided in subdivisions (b) and (c), and in Section 5127, a spouse who is operating or managing a business or an interest in a business that is all or substantially all community personal property has the primary management and control of the business or interest. Primary management and control means that the managing spouse may act alone in all transactions but shall give prior written notice to the other spouse of any sale, lease, exchange, encumbrance or other disposition of all or substantially all of the personal property used in the operation of the business (including personal property used for agricultural purposes), whether or not title to that property is held in the name of only one spouse. Written notice is not, however, required when prohibited by the law otherwise applicable to the transaction.~~

~~Any change of the form of a business is not subject to the requirement of written notice.~~

~~Remedies for the failure by a managing spouse to give prior written notice as required by this subdivision are only as specified in Section 5125.1. A failure to give prior written notice shall not adversely affect the validity of a transaction nor of any interest transferred.~~

~~(e) Each spouse shall act in good faith with respect to the other spouse in the management and control of the community property in accordance with the general rules which control the actions of persons having relationships of~~

~~personal confidence as specified in Section 5103, until such time as the property has been divided by the parties or by a court. This duty includes the obligation to make full disclosure to the other spouse of the existence of assets in which the community has an interest and debts for which the community may be liable, upon request. The case law defining the standard of care applicable to Section 5103, but not the case law applicable to former Title 8 (commencing with Section 2215) of Part 4 of Division 3 of this code (as repealed by Chapter 820 of the Statutes of 1986) or Division 9 (commencing with Section 15000) of the Probate Code, applies to this section. In no event shall this standard be interpreted to be less than that of good faith in confidential relations nor as high as that established by former Title 8 (commencing with Section 2215) of Part 4 of Division 3 of this code (as repealed by Chapter 820 of the Statutes of 1986) or Division 9 (commencing with Section 15000) of the Probate Code.~~

Comment. The substance of subdivision (a) of former Section 5125 is continued in Sections 5125.120 (either spouse has management and control) and 5125.210 (power of disposition absolute).

The substance of subdivision (b) is continued in subdivision (a), and limited in subdivision (b), of Section 5125.240 (gifts).

Subdivision (c) is superseded by Sections 5125.250 (disposition of family dwelling) and 5125.260 (encumbrance of household goods).

The substance of subdivision (d) is continued in Sections 5125.310-.330 (community personal property business).

The substance of subdivision (e) is continued in Section 5125.130 (duty of good faith).

#### § 5125.1 (repealed). Interspousal remedies

~~5125.1. (a) A spouse has a claim against the other spouse for a breach of the duty imposed by Section 5125 or 5127 that results in substantial impairment to the claimant spouse's present undivided one-half interest in the community estate.~~

~~(b) A court may order an accounting of the property and obligations of the parties to a marriage and may determine the rights of ownership in, the beneficial enjoyment of, or access to, community property, and the classification of all property of the parties to a marriage.~~

~~(c) A court may order that the name of a spouse shall be added to community property held in the name of the other spouse alone or that the title of community property held in some other title form shall be reformed to reflect its community character, except with respect to any of the following:~~

~~(1) A partnership interest held by the other spouse as a general partner.~~

~~(2) An interest in a professional corporation or professional association.~~

~~(3) An asset of an unincorporated business if the other spouse is the only spouse involved in operating and managing the business.~~

~~(4) Any other property, if the revision would adversely affect the rights of a third person.~~

~~(d)(1) Except as provided in paragraph (2), any action under subdivision (a) shall be commenced within three years of the date a petitioning spouse had actual knowledge that the transaction or event for which the remedy is being sought occurred.~~

~~(2) An action may be commenced under this section upon the death of a spouse or in conjunction with an action for legal separation, dissolution of marriage, or nullity without regard to the time limitations set forth in paragraph (1).~~

~~(3) The defense of laches may be raised in any action brought under this section.~~

~~(4) Except as to actions authorized by paragraph (2), remedies under subdivision (a) apply only to transactions or events occurring on or after July 1, 1987.~~

~~(e) In any transaction affecting community property in which the consent of both spouses is required, the court may, upon the motion of a spouse, dispense with the requirement of the other spouse's consent if both of the following requirements are met:~~

~~(1) The proposed transaction is in the best interest of the community.~~

~~(2) Consent has been arbitrarily refused or cannot be obtained due to the physical incapacity, mental incapacity, or prolonged absence of the nonconsenting spouse.~~

~~(f) Any action may be brought under this section without filing an action for dissolution of marriage, legal separation, or nullity, or may be brought in conjunction with the action or upon the death of a spouse.~~

Comment. The substance of subdivision (a) of Section 5125.1 is continued in subdivision (a) of Section 5125.410 (claim for breach of duty).

The substance of subdivision (b) is continued in Section 5125.420 (accounting and court determination).

The substance of subdivision (c) is continued in Section 5125.430 (adding name to title to property).

The substance of subdivision (d) is continued in subdivisions (b)-(e) of Section 5125.410 (claim for breach of duty).

The substance of subdivision (e) is continued in Section 5125.440 (when consent requirement may be dispensed with).

The substance of subdivision (f) is continued in Section 5125.450 (procedural aspects of action under this article).

§ 5126 (repealed). Personal injury damage awards

~~5126. (a) All money or other property received or to be received by a person in satisfaction of a judgment for damages for personal injuries or pursuant to an agreement for the settlement or compromise of a claim for such damages is the separate property of the injured person if the cause of action for such damages arose as follows:~~

~~(1) After the rendition of a decree of legal separation or a judgment of dissolution of a marriage.~~

~~(2) While either spouse, if he or she is the injured person, is living separate from the other spouse.~~

~~This subdivision shall apply retroactively to any case where the property rights of the marriage have not been finally adjudicated by a decree of dissolution or separation.~~

~~(b) Notwithstanding subdivision (a), if the spouse of the injured person has paid expenses by reason of the spouse's personal injuries from his or her separate property or from the community property, he or she is entitled to reimbursement of his separate property or the community property for such expenses from the separate property received by his or her spouse under subdivision (a).~~

~~(c) Notwithstanding subdivision (a), if one spouse has a cause of action against the other spouse which arose during the marriage of the parties, money or property paid or to be paid by or on behalf of a party to his or her spouse of that marriage in satisfaction of a judgment for damages for personal injuries to such spouse or pursuant to an agreement for the settlement or compromise of a claim for such damages is the separate property of the injured spouse.~~

Comment. Former Section 5126 is renumbered as Section 5117 (personal injury damage awards) without other change.

#### § 5127. Community real property

~~5127. Except as provided in Sections 5110, 150 and 5128, either spouse has the management and control of the community real property, whether acquired prior to or on or after January 1, 1975, but both spouses either personally or by duly authorized agent, must join in executing any instrument by which such community real property or any interest therein is leased for a longer period than one year, or is sold, conveyed, or encumbered; provided, however, that nothing herein contained shall be construed to apply to a lease, mortgage, conveyance, or transfer of real property or of any interest in real property between husband and wife; provided, also, however, that the sole lease, contract, mortgage or deed of the husband, holding the record title to community real property, to a lessee, purchaser, or encumbrancer, in good faith without knowledge of the marriage relation, shall be presumed to be valid if executed prior to January 1, 1975, and that the sole lease, contract, mortgage, or deed of either spouse, holding the record title to community real property to a lessee, purchaser, or encumbrancer, in good faith without knowledge of the marriage relation, shall be presumed to be valid if executed on or after January 1, 1975. No action to avoid any instrument mentioned in this section, affecting any property standing of record in the name of either spouse alone, executed by the spouse alone, shall be commenced after the expiration of one year from the filing for record of such instrument in the recorder's office in the county in which the land is situate, and no action to avoid any instrument mentioned in this section, affecting any~~

~~property standing of record in the name of the husband alone, which was executed by the husband alone and filed for record prior to the time this act takes effect, in the recorder's office in the county in which the land is situate, shall be commenced after the expiration of one year from the date on which this act takes effect.~~

Comment. The substance of the first clause of the first sentence of former Section 5127 is continued in Sections 5125.120 (either spouse has management and control), 5125.150 (agency), and 5125.230 (disposition of real property), with some expansion of the types of disposition for which joinder is required. See Section 5125.110(a) ("disposition" includes transfer, conveyance, sale, gift, encumbrance, lease, or exchange). The substance of the second clause is continued in subdivision (b) of Section 5125.210 (power of disposition absolute). The third clause is superseded by subdivision (c) of Section 5125.270 (avoiding and setting aside disposition).

The second sentence is superseded by subdivision (a) of Section 5125.270 (avoiding and setting aside disposition).

§ 5128 (repealed). Management and control where spouse has conservator or lacks legal capacity

~~5128. (a) Where one or both of the spouses either has a conservator of the estate or lacks legal capacity to manage and control community property, the procedure for management and control (which includes disposition) of the community property is that prescribed in Part 6 (commencing with Section 3000) of Division 4 of the Probate Code.~~

~~(b) Where one or both spouses either has a conservator of the estate or lacks legal capacity to give consent to a gift of community personal property without a valuable consideration as required by Section 5125 or to a sale, conveyance, or encumbrance of community personal property for which a consent is required by Section 5125, the procedure for such gift, disposition, sale, conveyance, or encumbrance is that prescribed in Part 6 (commencing with Section 3000) of Division 4 of the Probate Code.~~

~~(c) Where one or both spouses either has a conservator of the estate or lacks legal capacity to join in executing a lease, sale, conveyance, or encumbrance of community real property or any interest therein as required by Section 5127, the procedure for such lease, sale, conveyance, or encumbrance is that prescribed in Part 6 (commencing with Section 3000) of Division 4 of the Probate Code.~~

Comment. Subdivision (a) of former Section 5128 is continued in Section 5125.140 (where spouse has conservator or lacks legal capacity). Subdivisions (b) and (c) were elaborations of subdivision (a) and are not continued because they are unnecessary.

Corporations Code § 420 (technical amendment). Immunity from liability of corporation, transfer agent, or registrar

SEC. . Section 420 of the Corporations Code is amended to read:

420. Neither a domestic nor foreign corporation nor its transfer agent or registrar is liable:

(a) For transferring or causing to be transferred on the books of the corporation to the surviving joint tenant or tenants any share or shares or other securities issued to two or more persons in joint tenancy, whether or not the transfer is made with actual or constructive knowledge of the existence of any understanding, agreement, condition or evidence that the shares or securities were held other than in joint tenancy or of a breach of trust by any joint tenant.

(b) To a minor or incompetent person in whose name shares or other securities are of record on its books or to any transferee of or transferor to either for transferring the shares or other securities on its books at the instance of or to the minor or incompetent or for the recognition of or dealing with the minor or incompetent as a shareholder or security holder, whether or not the corporation, transfer agent or registrar had notice, actual or constructive, of the nonage or incompetency, unless a guardian or conservator of the property of the minor or incompetent has been appointed and the corporation, transfer agent or registrar has received written notice thereof.

(c) To any married person or to any transferee of such person for transferring shares or other securities on its books at the instance of the person in whose name they are registered, without the signature of such person's spouse and regardless of whether the registration indicates that the shares or other securities are community property, in the same manner as if such person were unmarried.

(d) For transferring or causing to be transferred on the books of the corporation shares or other securities pursuant to a judgment or order of a court which has been set aside, modified or reversed unless, prior to the registration of the transfer on the books of the corporation, written notice is served upon the corporation or its transfer agent in the manner provided by law for the service of a

summons in a civil action, stating that an appeal or other further court proceeding has been or is to be taken from or with regard to such judgment or order. After the service of such notice neither the corporation nor its transfer agent has any duty to register the requested transfer until the corporation or its transfer agent has received a certificate of the county clerk of the county in which the judgment or order was entered or made, showing that the judgment or order has become final.

(e) The provisions of the California Commercial Code shall not affect the limitations of liability set forth in this section. Section 5125 Chapter 4 (commencing with Section 5125.110) of Title 8 of Part 5 of Division 4 the Civil Code shall be subject to the provisions of this section and shall not be construed to prevent transfers, or result in liability to the corporation, transfer agent or registrar permitting or effecting transfers, which comply with this section.

Comment. Section 420 is amended to correct a section reference.

Education Code § 24603 (technical amendment). State Teachers' Retirement System

SEC. . Section 24603 of the Education Code is amended to read:

24603. (a) Payment pursuant to the board's determination in good faith of the existence, identity or other facts relating to entitlement of persons constitutes a complete discharge of and release of the system from liability for the payment so made.

(b) Notwithstanding the provisions of ~~Sections 5105 and 5125~~ Title 8 (commencing with Section 5100) of Part 5 of Division 4 of the Civil Code relating to community property interests, whenever payment or refund is made by this system to a member, former member, beneficiary of a member or estate of a member pursuant to any provision of this part, the payment shall fully discharge the system from all adverse claims thereto unless, before payment is made, the system has received at its office in Sacramento written notice of adverse claim.

Comment. The amendments to Section 24603 are technical.

Government Code § 21210 (technical amendment). Public Employees' Retirement Law

SEC. . Section 21210 of the Government Code is amended to read:

21210. Notwithstanding the provisions of ~~Sections 5105 and 5125~~ Title 8 (commencing with Section 5100) of Part 5 of Division 4 of the Civil Code, whenever payment or refund is made by this system to a member, former member, beneficiary of a member or estate of a member pursuant to any provision of this part, ~~such~~ the payment shall fully discharge this system from all adverse claims thereto unless, before ~~such~~ the payment or refund is made, this system has received at its office in Sacramento written notice by or on behalf of some other person that ~~such~~ the person claims to be entitled to ~~such~~ the payment or refund.

Comment. The amendments to Section 21210 are technical.

Insurance Code § 10172 (technical amendment). Life insurance

SEC. . Section 10172 of the Insurance Code is amended to read:

10172. Notwithstanding the provisions of ~~Sections 5105 and 5125~~ Title 8 (commencing with Section 5100) of Part 5 of Division 4 of the Civil Code, when the proceeds of, or payments under, a life insurance policy become payable and the insurer makes payment thereof in accordance with the terms of the policy, or in accordance with the terms of any written assignment thereof if the policy has been assigned, ~~such~~ the payment shall fully discharge the insurer from all claims under ~~such~~ the policy unless, before such payment is made, the insurer has received, at its home office, written notice by or on behalf of some other person that ~~such~~ the other person claims to be entitled to ~~such~~ the payment or some an interest in the policy.

Comment. The amendments to Section 10172 are technical.

Probate Code § 3002 (amended). Community property defined

SEC. . Section 3002 of the Probate Code, as amended by Section 14 of Chapter 113 of the Statutes of 1988, is amended to read:

3002. "Community property" means community real property and community personal property, including, but not limited to, a community property business that is or was under the sole or primary management

and control of one of the spouses, but does not include community property in a revocable trust described in Section 5110.150 of the Civil Code.

Comment. Section 3002 is amended for conformity with Civil Code Section 5125.320 (primary management and control).

Probate Code § 3071 (technical amendment), Satisfaction of joinder or consent requirement where spouse lacks legal capacity

SEC. . Section 3071 of the Probate Code is amended to read:

3071. (a) In case of a transaction for which the joinder or consent of both spouses is required by ~~Section 5125 or 5127~~ Article 2 (commencing with Section 5125.210) of Chapter 4 of Title 8 of Part 5 of Division 4 of the Civil Code or by any other statute, if one or both spouses lacks legal capacity for the transaction, the requirement of joinder or consent shall be satisfied as provided in this section.

(b) Where one spouse has legal capacity for the transaction and the other spouse has a conservator, the requirement of joinder or consent is satisfied if both of the following are obtained:

(1) The joinder or consent of the spouse having legal capacity.

(2) The joinder or consent of the conservator of the other spouse given in compliance with Section 3072.

(c) Where both spouses have conservators, the joinder or consent requirement is satisfied by the joinder or consent of each such conservator given in compliance with Section 3072.

(d) In any case, the requirement of joinder or consent is satisfied if the transaction is authorized by an order of court obtained in a proceeding pursuant to Chapter 3 (commencing with Section 3100).

Comment. Section 3071 is amended to correct section references.

Probate Code § 3072 (technical amendment), Joinder or consent by conservator

SEC. . Section 3072 of the Probate Code is amended to read:

3072. (a) Except as provided in subdivision (b), a conservator may join in or consent to a transaction under Section 3071 only after authorization by either of the following:

(1) An order of the court obtained in the conservatorship proceeding upon a petition filed pursuant to Section 2403 or under Article 7 (commencing with Section 2540) or 10 (commencing with Section 2580) of Chapter 6 of Part 4.

(2) An order of the court made in a proceeding pursuant to Chapter 3 (commencing with Section 3100).

(b) A conservator may ~~consent~~ join without court authorization ~~to a sale, conveyance, or encumbrance of~~ in the creation of a security interest in community personal property requiring ~~consent under subdivision (e) of Section 5125~~ joinder under Section 5125.260 of the Civil Code if the conservator could sell or transfer such property under Section 2545 without court authorization if the property were a part of the conservatorship estate.

Comment. Section 3072 is amended to correct a section reference.

Probate Code § 3073 (technical amendment). Manner of joinder or consent

SEC. . Section 3073 of the Probate Code is amended to read:

3073. (a) The joinder or consent under Section 3071 of a spouse having legal capacity shall be in such manner as complies with ~~Section 5125 or 5127~~ Article 2 (commencing with Section 5125.210) of Chapter 4 of Title 8 of Part 5 of Division 4 of the Civil Code or other statute that applies to the transaction.

(b) The joinder or consent under Section 3071 of a conservator shall be in the same manner as a spouse would join in or consent to the transaction under the statute that applies to the transaction except that the joinder or consent shall be executed by the conservator and shall refer to the court order, if one is required, authorizing the conservator to join in or consent to the transaction.

Comment. Section 3073 is amended to correct section references.