

Memorandum 83-76

Subject: Study H-510 - Joint Tenancy and Community Property (Comments on Final Recommendation)

The Commission's recommendation on joint tenancy and community property was approved at the June 1983 meeting for printing and submission to the 1984 legislative session. The recommendation makes changes in joint tenancy law affecting the manner and effect of severance and creates a new category of property tenure--community property with right of survivorship. A copy of the recommendation is attached. It is now ready to print, but we have held up printing in order to give the Commission an opportunity to consider the additional comments we have received from Kenneth M. Klug, attached as Exhibit 1. The comments are analyzed below.

§ 745.310. Severance of joint tenancy

Mr. Klug is concerned that if a joint tenant executes a unilateral severance by written declaration, this could be done secretly and either produced or withheld, depending on the joint tenant's advantage. Mr. Klug suggests that a severance by written declaration be effective only if served on the other joint tenants before the severing joint tenant dies.

The Commission has considered this problem before but has been reluctant to require service of the severance both because of the proof problems and uncertainty in title this would cause and because of the belief that a joint tenant should be able to act freely without fear of pressure from the other joint tenants. Moreover, a joint tenant who wanted to keep the severance secret could avoid the service requirement anyway simply by using the traditional strawman conveyance technique.

The solution adopted by the Commission in Section 745.310 is to require that a severance by written declaration of real property be recorded to be effective. The recordation requirement would be unnecessary where all joint tenants have joined in the severance.

§ 745.320. Effect of survivorship

Under existing law, the decedent's interest in joint tenancy property passes to the survivor free of claims of the decedent's creditors and free even of liens on the decedent's interest. This rule is plainly

inequitable, resulting in a windfall to the surviving joint tenant and an unfair loss to the creditor. The Commission in the past has sought to make the share of the decedent subject to creditors' claims, without success. Section 745.320 takes a more limited approach of subjecting the decedent's interest only to liens on the interest.

Mr. Klug does not believe this halfway measure is proper. He feels the law should be consistent--either all creditors, secured and unsecured, should be able to reach the decedent's interest or none should. The staff disagrees--merely because an inequity will still apply to some creditors is no reason the inequity should apply to all. Moreover, there is a rational basis for the difference in treatment, since the secured creditor has taken overt steps to achieve security and the policy of the law is to protect a security interest.

Mr. Klug suggests that if a creditor is to be able to enforce the lien on the decedent's share, the creditor should be required to perfect the claim against the property either by giving written notice to the surviving joint tenant within six months after the date of death or by filing a creditor's claim in the probate proceeding. Mr. Klug states that it is "unfair to the surviving joint tenant to require that he obtain a preliminary title report on his own property or undertake any other affirmative action to ferret out adverse claims." The staff is not convinced by this argument. A joint tenant can never rest assured that he or she will receive any property at all from the other joint tenant, let alone unencumbered property, since the other joint tenant can sever the joint tenancy at will and without notice. A joint tenant who thinks he or she has gotten something by right of survivorship needs to get a title report to be sure, and the title report will also reveal secured claims on the property. The staff would not impose any further requirements on the creditor.

There remains the problem of how much of the joint tenancy property the secured creditor can reach. The Commission's draft states that the creditor's lien burdens the property "to an extent not exceeding the proportionate value of the interest of the decedent." Thus, if the decedent was a one-half owner of the property and the property was worth \$100,000 at the decedent's death, the creditor's lien would burden the property to the extent of \$50,000. If the property appreciates in value to \$150,000 by the time the creditor seeks to collect, the lien would

burden the property to the extent of \$75,000. Mr. Klug points out a possible inequity here where the property has increased in value due to the efforts of the surviving joint tenant, for example by erecting a building on a lot that passed by joint tenancy survivorship. How should values be segregated here? Mr. Klug suggests a simple rule that the creditor's lien should burden the property only to the extent of the value of the decedent's interest in the property at the time of death. This seems like a not unreasonable compromise, at least in the case of an appreciating asset. In the case of a depreciating asset, however, it could be quite unfair to the survivor. The staff has no easy solutions; on balance, we believe the proportionate value approach adopted in the Commission's existing draft is a fairly reasonable one.

§ 5110.540. Legal incidents of community property with right of survivorship

The key features of community property with right of survivorship are that it is treated as community property for all purposes except that at death it passes by right of survivorship to the surviving spouse. The current Commission draft provides that the property is not subject to testamentary disposition but passes to the surviving spouse "in the same manner and with the same effect as community property that passes to the surviving spouse by intestate succession."

Mr. Klug believes that the property should pass not in the manner of community property but in the manner of joint tenancy property. He cites two reasons: (1) If the property passes as community, it may be felt necessary to obtain a court order determining or confirming it, whereas if it passes as joint tenancy, only an affidavit of death will be necessary to clear title. (2) If the property passes as community, it will be subject to claims of creditors of the decedent, whereas if it passes as joint tenancy, it will not. Mr. Klug believes that these features will cause community property with right of survivorship to be a disfavored form of property tenure and that they should not be applied retroactively to existing property held in joint tenancy form.

The initial drafts of the Commission's recommendation did have the property passing in the same manner as joint tenancy property. However, this was changed in the Commission's final recommendation because of concern that property passing in the same manner as joint tenancy would be given the same tax treatment as joint tenancy. This is a serious

concern, particularly in the case of property currently held in joint tenancy form. Under existing law the survivor may be able to convince the IRS the joint tenancy is really community property; this would not be possible under the Commission's recommendation. An article analyzing the Nevada law which authorizes community property with right of survivorship criticizes the law for a number of reasons, including the possibility of joint tenancy tax treatment under the law. Parks, Critique of Nevada's New Community Property with Right of Survivorship, Community Property Journal 5 (Winter 1983). The Editor's note that accompanies the article states, "We understand that in spite of expert contentions that the basic step-up, for income tax purposes, for both halves of the community property should not be jeopardized by engrafting a right of survivorship, the position taken by local IRS agents has been just the opposite in the few instances where this matter has already surfaced in Nevada--with the result that a movement is indeed afoot to repeal the new law."

In light of this information, the staff thinks it is important to try to identify the new form of tenure as closely as possible with community property and as little as possible with joint tenancy. With respect to the issues raised by Mr. Klug, these should be dealt with directly. There should be no requirement of a court proceeding for the new form of property tenure since the property will not be subject to testamentary disposition--an affidavit of death should be all that is necessary to clear title. If it is felt necessary, we can add language to the statute or comment making this clear. With regard to the question of the liability of the property to claims of creditors, we have taken the position that the property should be liable. We could try again to conform the law of joint tenancy to the law of community property by making joint tenancy property liable, but this is politically unappealing and could sink the whole bill. We think it is not likely that the liability of community property for debts will cause people to hold property as joint tenants, given the adverse tax consequences of doing so. And if they do wish to do so, the law enables them to make their selection in the form of title, including a one-year grace period for

changing the form of title of property owned on the operative date of the new law.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

EXHIBIT I

THOMAS, SNELL, JAMISON, RUSSELL, WILLIAMSON & ASPERGER
ATTORNEYS AT LAW

HOWARD B. THOMAS
OLIVER M. JAMISON
PAUL ASPERGER
ROGER E. FIPPS
JAMES E. LA FOLLETTE
ROBERT J. TYLER
NICKOLAS J. DIBIASO
GERALD D. VINNARD
WILLIAM A. DAHL
STEVEN M. MCCLEAN
BRUCE O. BICKEL
TRACY A. AGRALL
DONALD P. ASPERGER

WILLIAM M. SNELL
T. NEWTON RUSSELL
CHARLES E. SMALL
PHILIP H. WILE
JAMES O. DEMSEY
JOHN G. MENGSHOL
KENNETH M. KLUG
JOHN J. MCGREGOR
DENISE A. POUTHIER
JEFFREY P. KANE
E. ROBERT WRIGHT
DAVID M. GILMORE

TENTH FLOOR DEL WEBB BUILDING
POST OFFICE BOX 1461
FRESNO, CALIFORNIA 93716
TELEPHONE (209) 442-0600

OF COUNSEL
FENTON WILLIAMSON, JR.

SENT FOR YOUR INFORMATION
THOMAS, SNELL, JAMISON, RUSSELL,
WILLIAMSON & ASPERGER

July 25, 1983

Ms. Clare H. Springs
Attorney at Law
One Embarcadero Center
Suite 2701
San Francisco, California 94111

Re: LRC Study H-510
Recommendation Relating to Joint
Tenancy and Community Property

Dear Clare:

In general I support the recommendation of the Law Revision Commission relating to joint tenancy and community property. There are several items which should be corrected.

Article 3. Termination of Joint Tenancy

Section 745.310. Severance of Joint Tenancy. The proposal allows a joint tenant to sever the joint tenancy by executing a written declaration of severance. The proposal should require as a condition of effectiveness that the written declaration of severance be delivered to all other joint tenants during the lifetime of the severing joint tenant. In particular, the statute should be drafted to guard against secret, undisclosed severances which surface when the severing joint tenant dies first, but mysteriously disappear if the non-severing joint tenant dies first. The problem could be solved by revising the last sentence of subsection (a) to read as follows: "Except as provided in subdivision (b), a severance by written declaration is effective at the time of execution of the written declaration, but only if the written declaration is served on all other joint tenants during the lifetime of the joint tenant who executes the written declaration."

Section 745.320. Effect of Survivorship. I have some trouble with the concept of allowing an encumbrance or lien on one joint tenant's interest to survive the death of

Ms. Clare H. Springs
July 25, 1983
Page Two

that joint tenant. There does not seem to me any reason for a policy difference between protecting an uninformed lender who takes a security in a joint tenancy interest and protecting an uninformed lender who takes no security. Present law provides a windfall to the surviving joint tenant in both situations. The Law Revision Commission proposal will protect a secured creditor, but not an unsecured creditor. The unsecured creditor who can reduce the debt to a judgment and record the judgment is protected, whereas the unsecured creditor who has not been able to reduce the debt to a judgment prior to the joint tenant's death is left begging. This is an artificial inconsistency which should be eliminated. I don't much care which way the rule goes, but it should be consistent.

Subsection (a) provides that the lien or other security interest burdens the property to an extent not exceeding the proportionate value of the interest of the decedent. I would add "at the time of death" to the end of the second sentence of subsection (a). For example, suppose two joint tenants own a vacant lot (each having contributed one-half) and one joint tenant dies. The survivor erects a building, without knowledge of the security interest on the deceased joint tenant's share. Clearly, the creditor should not share in any of the value attributed to the building, but how is that value to be determined? How do you segregate the current value of one-half of the lot from the value of the other half of the lot plus the building? How is the appreciation (or depreciation) in the deceased joint tenant's share of the lot to be measured? These sorts of problems overcomplicate what should be a simple and straight-forward rule. I would recommend that the value of the security be limited to the value of the deceased joint tenant's share at the time of death.

Furthermore, the creditor should be required to perfect a claim against the joint tenancy property either by giving written notice of the claim to the surviving joint tenant within six months of the date of death, or by filing a creditor's claim in the probate proceeding, whichever period shall expire earlier. It is unfair to the surviving joint tenant (who may be ignorant of the claim) not to establish some notice procedure whereby he can be apprised of the claim. It is equally unfair to the surviving joint tenant to require that he obtain a preliminary title report on his own property or undertake any other affirmative

Ms. Clare H. Springs
July 25, 1983
Page Three

action to ferret out adverse claims. The advantage of joint tenancy is the simplicity of transfer of title without the necessity of going to the expense of administration. Since the LRC proposal expands the creditor's rights, it is not unfair to put the burden on the creditor to perfect those rights.

Article 5. Community Property With Right of Survivorship
(C.P.W.R.O.S)

Generally, I like this concept. The major benefit is that a surviving spouse's half of this type of property should receive new basis under IRC Section 1014(b)(6).

Section 5110.540. Legal Incidents of Right of Survivorship.

Subsection (b) provides that the property passes to the surviving spouse "in the same manner and with the same effect as community property that passes to the surviving spouse by intestate succession." That language is bad.

First, it is confusing. Must a Section 650 petition be filed? The passage should be automatic, and not require a Court order; it should pass just like joint tenancy property now passes. If the transfer procedure under C.P.W.R.O.S. is more complicated than under joint tenancy, everyone will use joint tenancy ownership instead of the "C.P.W.R.O.S."

Second, passing property "with the same effect as community property" does not protect the surviving spouse against creditors. Under the proposal, we have the absurd result that the surviving spouse who takes C.P.W.R.O.S. continues to be liable to unsecured creditors, whereas a joint tenant would not be liable to unsecured creditors! With this result, would anyone hold title as C.P.W.R.O.S.? The surviving spouse who takes C.P.W.R.O.S. should be in the same position as a non-spouse who takes joint tenancy by right of survivorship. In other words, C.P.W.R.O.S. should be deemed to be community property for all purposes during lifetime, but have all of the attributes of joint tenancy on the death of either spouse. This result would be achieved by revising the first sentence of subsection (b) to read as follows: "The property is not subject to testamentary

Ms. Clare H. Springs
July 25, 1983
Page Four

disposition but passes to the surviving spouse in the same manner and with the same effect as if the property had been held by the spouses as joint tenants under Section 745.320."

I believe the above change to be extremely important. In view of the proposal of Section 5110.520 (which would change current joint tenancies to C.P.W.R.O.S. and remove the joint tenancy protection from joint tenancy property currently held as such by spouses), I would oppose the Law Revision Commission's recommendation unless the above change were made.

Very truly yours,

Kenneth M. Klug

Kenneth M. Klug

cc: Theodore J. Cranston
Ann Stodden
Arthur K. Marshall
William S. McClanahan
John H. DeMouilly ✓

STATE OF CALIFORNIA

CALIFORNIA LAW
REVISION COMMISSION

RECOMMENDATION

relating to

JOINT TENANCY AND COMMUNITY PROPERTY

June 1983

CALIFORNIA LAW REVISION COMMISSION
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94306

CALIFORNIA LAW REVISION COMMISSION

4000 MIDDLEFIELD ROAD, ROOM D-2

PALO ALTO, CALIFORNIA 94306

(415) 494-1335

LETTER OF TRANSMITTAL

June 4, 1983

To: THE HONORABLE GEORGE DEUKMEJIAN
Governor of California and
THE LEGISLATURE OF CALIFORNIA

The Law Revision Commission was authorized by Resolution Chapter 65 of the Statutes of 1978 to study whether the law relating to community property should be revised. The Commission submits this recommendation for a comprehensive revision of the law governing community property in its relation to joint tenancy, including recognition of a new manner of property tenure for married persons--community property with right of survivorship.

This recommendation builds upon the Commission's Recommendation Relating to Division of Joint Tenancy and Tenancy in Common Property at Dissolution of Marriage, 16 Cal. L. Revision Comm'n Reports 2165 (1982) (enacted in substantially revised form as 1983 Cal. Stats. ch. _____), which was limited to immediate problems involving division at dissolution of marriage. This recommendation is broader, dealing with all aspects of community property and joint tenancy.

Respectfully submitted,

DAVID ROSENBERG
Chairperson

RECOMMENDATION

relating to

JOINT TENANCY AND COMMUNITY PROPERTY

Interrelation of Joint Tenancy and Community Property

A husband and wife in California may hold property in joint tenancy or as community property.¹ The two types of tenure, one common law and the other civil law, have different legal incidents--the spouses have different management and control rights and duties, creditors have different rights to reach the property, and the property is treated differently at dissolution of marriage and at death.²

In California it is common for husband and wife to take title to property in joint tenancy form even though the property is acquired with community funds. Frequently the joint tenancy title form is selected by the spouses upon the advice of brokers and other persons who are ignorant of the differences in legal treatment between the two types of property tenure. The spouses themselves are ordinarily unaware of the differences between the two types of tenure, other than that joint tenancy involves a right of survivorship.³

As a consequence, a person who is adversely affected by the joint tenancy title form may litigate in an effort to prove that the spouses did not intend to transmute the community property into joint tenancy. Because joint tenancy is often disadvantageous to the spouses, particularly the tax consequences of joint tenancy, the courts have been liberal in relaxing evidentiary rules to allow proof either that the

-
1. Civil Code § 5104. The spouses may also hold property as tenants in common, although this is relatively infrequent.
 2. See, e.g., Sterling, Joint Tenancy and Community Property in California, 14 Pac. L.J. 927 (1983).
 3. See, e.g., Bruch, The Definition and Division of Marital Property in California: Towards Parity and Simplicity, 33 Hastings L.J. 769, 828-38 (1982).

spouses did not intend to transmute community property to joint tenancy or, if they did, that they subsequently transmuted it back.⁴

The result has been general confusion and uncertainty in this area of the law, accompanied by frequent litigation⁵ and negative critical comment.⁶ It is apparent that the interrelation of joint tenancy and community property requires clarification.

Legislation enacted in 1965 directly addressed the problem of married persons taking title to property in joint tenancy form without being aware of the consequences and in fact believing the property is

4. See, e.g., Reppy, Debt Collection from Married Californians: Problems Caused by Transmutations, Single-Spouse Management, and Invalid Marriage, 18 San Diego L. Rev. 143, 159-68 (1981).
5. See, e.g., Siberell v. Siberell, 214 Cal. 767, 7 P.2d 1003 (1932); Delanoy v. Delanoy, 216 Cal. 23, 13 P.2d 513 (1932); Tomaier v. Tomaier, 23 Cal.2d 754, 146 P.2d 905 (1944). Cases struggling with the issue in the past two or three years include In re Marriage of Lucas, 27 Cal.3d 808, 614 P.2d 285, 166 Cal. Rptr. 853 (1980); In re Marriage of Camire, 105 Cal. App.3d 859, 164 Cal. Rptr. 667 (1980); In re Marriage of Gonzales, 116 Cal. App.3d 556, 172 Cal. Rptr. 179 (1981); In re Marriage of Cademartori, 119 Cal. App.3d 970, 174 Cal. Rptr. 292 (1981); In re Marriage of Mahone, 123 Cal. App.3d 17, 176 Cal. Rptr. 274 (1981); Badillo v. Badillo, 123 Cal. App.3d 1009, 177 Cal. Rptr. 56 (1981); In re Marriage of Hayden, 124 Cal. App.3d 72, 177 Cal. Rptr. 183 (1981); Estate of Levine, 125 Cal. App.3d 701, 178 Cal. Rptr. 275 (1981); In re Marriage of Miller, 133 Cal. App.3d 988, 184 Cal. Rptr. 408 (1982).
6. See, e.g., Comment, 5 S. Cal. L. Rev. 144 (1931); Miller, Joint Tenancy as Related to Community Property, 19 Cal. St. B.J. 61 (1944); Note, 32 Calif. L. Rev. 182 (1944); Lyman, Oral Conversion of Property by Husband and Wife from Joint Tenancy to Community Property, 23 Cal. St. B.J. 146 (1948); Marshall, Joint Tenancy, Taxwise and Otherwise, 40 Calif. L. Rev. 501 (1952); Brown & Sherman, Joint Tenancy or Community Property: Evidence, 28 Cal. St. B.J. 163 (1953); Joint Tenancy v. Community Property in California: Possible Effect Upon Federal Income Tax Basis, 3 UCLA L. Rev. 636 (1956); Griffith, Community Property in Joint Tenancy Form, 14 Stan. L. Rev. 87 (1961); Ferrari, Conversion of Community Property into Joint Tenancy Property in California: The Taxpayer's Position, 2 Santa Clara Lawyer 54 (1962); Griffith, Joint Tenancy and Community Property, 37 Wash. L. Rev. 30 (1962); Backus, Supplying or Prescribing Community Property Forms, 39 Cal. St. B.J. 381 (1964); Tax, Legal, and Practical Problems Arising from the Way in Which Title to Property Is Held by Husband and Wife, 1966 S. Cal. Tax'n Inst. 35 (1966); Knutson, California Community Property Laws: A Plea for Legislative Study and Reform, 39 S. Cal. L. Rev. 240 (1966); Mills, Community Joint Tenancy--A Paradoxical Problem in Estate Administration, 49 Cal. St. B.J. 38 (1974); Property Owned with Spouse: Joint Tenancy, Tenancy by the Entireties and Community

community.⁷ Civil Code Section 5110 provided that a single-family residence acquired during marriage in joint tenancy form is presumed community property for purposes of dissolution of marriage. This presumption has had a beneficial effect and was expanded in 1983 to apply to all property acquired during marriage in joint tenancy form.⁸ The

Property, 11 Real Prop. Prob. & Tr. J. 405 (1976); Sims, Consequences of Depositing Separate Property in Joint Bank Accounts, 54 Cal. St. B.J. 452 (1979); Mills, Community/Joint Tenancy--Avoid a Tax Double-play; Touch the Basis, 1979 S. Cal. Tax'n Inst. 951 (1979); Reppy, Debt Collection from Married Californians: Problems Caused by Transmutations, Single-Spouse Management, and Invalid Marriage, 18 San Diego L. Rev. 143 (1981); Bruch, The Definition and Division of Marital Property in California: Toward Parity and Simplicity (1981); Comment, 3 Whittier L. Rev. 617 (1981); Comment, 15 U.C.D. L. Rev. 95 (1981); Comment, 15 Loy. L.A. L. Rev. 157 (1981); Thomas, Marriage of Lucas and The Need for Legislative Change, Fam. L. News & Rev., Fall 1982, at 8; Sterling, Joint Tenancy and Community Property in California, 14 Pac. L.J. 927 (1983).

7. Cal. Assem. Int. Comm. on Judic., Final Report relating to Domestic Relations, reprinted in 2 App. J. Assem., Cal. Leg. Reg. Sess. 123-24 (1965).
8. Civ. Code § 4800.1, enacted by 1983 Cal. Stats. ch. _____, § 1. See California Law Revision Commission--Report Concerning Assembly Bill 26, 1983 Senate Journal _____ (1983).

1983 legislation also made clear that the community property presumption may be rebutted only by a clear writing by the spouses, but that separate property contributions are reimbursable at dissolution of marriage.⁹

This expansion is sound and should be effective to eliminate much of the confusion in this area of the law. However, the presumption is limited to dissolution of marriage. In order to clarify the property rights of the spouses generally, property acquired during marriage in joint tenancy form should be presumed community for all purposes, rebuttable by an express written agreement. This will correspond to the intention of most married persons not to lose basic community property protections merely by taking property in a joint tenancy title form.

If the spouses intend anything when they take title to property in joint tenancy form, it is that the property should pass at death to the surviving spouse without probate. Although the property is presumed to retain its community character during the lifetime of the spouses, at death the intended survivorship right should be given effect. This is consistent with the recommendation of many commentators who have studied the matter¹⁰ as well as with the law of other community property jurisdictions that permit the spouses to hold community property subject to a right of survivorship.¹¹ It is also the same treatment given to deposits by married persons in joint accounts in financial institutions under the California Multiple-Party Accounts Law.¹² Recognition of community

9. Civ. Code § 4800.2, enacted by 1983 Cal. Stats. ch. ___, § 2.
10. See, e.g., Griffith, Community Property in Joint Tenancy Form, 14 Stan. L. Rev. 87 (1961).
11. Idaho, New Mexico, and Washington recognize survivorship agreements between the spouses. Nevada provides for a title form of community property with right of survivorship. Nev. Rev. Stat. 111.064(2) (1981). California should also provide for an express title form of community property with right of survivorship.
12. Prob. Code § 5305, enacted by 1983 Cal. Stats ch. 92; see Recommendation Relating to Nonprobate Transfers, 16 Cal. L. Revision Commission Reports 129 (1982).

property "with right of survivorship" has not caused loss of favorable tax treatment accorded community property in other jurisdictions and ought not to do so in California.¹³

Severance of Joint Tenancy

If one joint tenant wishes to sever the joint tenancy (thereby destroying the right of survivorship), this can be done in two ways under existing California Law:

(1) If the property is located in most parts of California, the joint tenant must use the traditional technique of conveyance and reconveyance of his or her interest to and from a strawman.¹⁴

(2) If the property is located in the First or Second Appellate District, the joint tenant may sever the joint tenancy by a unilateral conveyance to himself or herself as a tenant in common.¹⁵

The strawman conveyance is a legal fiction designed to satisfy feudal technicalities that have no contemporary application. The law should codify the rule allowing unilateral severance of joint tenancy, but should require that a unilateral severance of a real property joint tenancy of record be recorded in order to minimize the opportunity for deceit.¹⁶

Effect of Survivorship on Secured Creditors

A creditor may obtain a security interest on the share of one joint tenant. This can occur voluntarily through a mortgage or other security

13. See Reppy, Debt Collection from Married Californians: Problems Caused by Transmutations, Single-Spouse Management, and Invalid Marriage, 18 San Diego L. Rev. 143, 238-40 (1981).
14. Clark v. Carter, 265 Cal. App.2d 291, 70 Cal. Rptr. 923 (1968); Estate of Dean, 109 Cal. App.3d 156, 167 Cal. Rptr. 138 (1980).
15. Riddle v. Harmon, 102 Cal. App.3d 524, 162 Cal. Rptr. 530 (1980) (1st App. Dist.); Estate of Carpenter, 140 Cal.App.3d 709, 189 Cal. Rptr 651 (1983) (2d App. Dist.); Estate of Grigsby, 134 Cal.App.3d 611, 184 Cal. Rptr. 886 (1982) (2d App. Dist.). See Letter, "Riddle in, Clark out?", Cal. Lawyer, February 1983, at 8-9.
16. Otherwise, there is a danger that a joint tenant may execute a secret severance and make a will disposing of his or her interest; then, if the other joint tenant dies first, the severing joint tenant simply destroys the secret document and takes the whole property by survivorship.

agreement between the joint tenant and the creditor or involuntarily when the creditor records a judgment lien or other lien against the interest of the joint tenant. The imposition of the lien does not have the effect of severing the joint tenancy, and when one of the joint tenants dies the other takes the whole by right of survivorship.

Under classical joint tenancy theory, if the joint tenant whose share is encumbered dies, the survivor takes the property free of the encumbrance.¹⁷ This peculiar result is the consequence of the theory that each joint tenant is seised of the whole from the time of creation of the joint tenancy, subject only to defeasance by failing to survive.¹⁸

Despite the technical justifications for the rule, it has no real social policy justification. The practical effect is that an informed lender will not give credit to one joint tenant; the joint tenant must either obtain the joinder of the other tenant to get a loan or else sever the joint tenancy. An uninformed lender, unaware of the potential loss, may give credit on the security of one joint tenant only to lose the security on the death of the joint tenant, while the survivor gets a windfall. In the case of a creditor who has obtained a judgment lien or other involuntary lien on the interest of one joint tenant, the creditor may be foolish to wait until the property is sold in order to collect because of the risk that the joint tenant will die; the creditor may be motivated to levy and sell immediately, to the detriment of the joint tenant.

To remedy these defects the law should be revised to provide that a security interest on the share of one joint tenant is not extinguished by the death of the joint tenant. This will create a more equitable result and will conform the law of joint tenancy to the law governing

17. See e.g., *People v. Nogarr*, 164 Cal App.2d 591, 330 P.2d 858 (1958); *Hamel v. Gootkin*, 202 Cal. App.2d 27, 20 Cal. Rptr. 372 (1962).

18. See discussion in *Zeigler v. Bonnell*, 52 Cal. App.2d 217, 126 P.2d 118 (1942); *Hammond v. McArthur*, 30 Cal.2d 512, 183 P.2d 1 (1947).

other types of tenure by several persons--tenancy in common and community property. It is also consistent with the recommendations of commentators.¹⁹

Effect of Survivorship on Lessees

A long-term lease of the property given by one joint tenant does not sever the joint tenancy; if the joint tenant dies during the term of the lease, the property passes to the surviving joint tenant and the lease is terminated by operation of law.²⁰

The existing California rule is plainly intended to favor the surviving joint tenant at the expense of the third party to whom the lease is made. The argument is that the third party is in a position to protect himself or herself by inspection of the property records; presumably the third party, upon discovery that the property to be leased is held in joint tenancy, could require either a joinder of both owners or a prior severance of the tenure. A more likely result is development of a standard practice, at least in long-term commercial leases, that a lessee requires as one of the lease clauses that the lessor specifically severs or intends to sever any joint tenancy in the property. Then the only lessees trapped by the peculiar law of joint tenancy will be uninformed persons who innocently and in good faith enter into what appears to be a binding lease.

If the lease is a long-term lease at below market rates and is allowed to survive, it can substantially impair the interest of the survivor. This was the main concern of the court in Tenhet v. Boswell,²¹ which stated the rule that the lease terminates with the death of the lessor. But it should be noted that such an impairment can also occur during the life of the lessor. In such a case the tenant out of posses-

19. See, e.g., Hines, Personal Property Joint Tenancies: More Law, Fact and Fancy, 54 Minn. L. Rev. 509 (1970); Swenson & Degnan, Severance of Joint Tenancies, 38 Minn. L. Rev. 466 (1954); Mattis, Severance of Joint Tenancies by Mortgage: A Contextual Approach, 1977 S. Ill. U. L.J. 27 (1977); Comment, 11 Stan. L. Rev. 574 (1959).

20. Tenhet v. Boswell, 18 Cal.3d 150, 554 P.2d 330, 133 Cal. Rptr. 10 (1976).

21. Id.

sion is either entitled to a share of the rents or to joint possession; otherwise, partition is the remedy. Moreover, the lessor may make an outright transfer of the property, thereby defeating any expectancy of the other joint tenant altogether.

The rule that death of the joint tenant lessor terminates the lease has been criticized as a corruption of traditional joint tenancy theory and substitution of a rule of partial severance has been advocated.²² The lease should not cause a severance, but upon the death of the lessor the survivor should take the joint tenancy property subject to the lease on the decedent's undivided share. The survivor and lessee must work out a sharing arrangement for the property, just as joint tenants must. If the survivor and the lessee are unable to work out their possessory rights, they can partition. This solution will more equitably accommodate the interests of both lessor and lessee than existing law.

22. Comment, Consequences of a Lease to a Third Party Made by One Joint Tenant, 66 Calif. L. Rev. 69 (1978); Comment, Joint Tenancy in California Revisited: A Doctrine of Partial Severance, 61 Calif. L. Rev. 231 (1973).

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

An act to add Chapter 5 (commencing with Section 745.110) to Title 2 of Part 1 of Division 2 of, to add Article 5 (commencing with Section 5110.510) to Title 8 of Part 5 of Division 4 of, to amend Section 686 of, and to repeal Sections 683, 683.1, 684, 687, 704, and 4800.1 of, the Civil Code, and to amend Section 8627 of the Health and Safety Code, relating to property tenure.

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

26962

Civil Code § 683 (repealed)

SECTION 1. Section 683 of the Civil Code is repealed.

~~683. (a) A joint interest is one owned by two or more persons in equal shares, by a title created by a single will or transfer, when expressly declared in the will or transfer to be a joint tenancy, or by transfer from a sole owner to himself or herself and others, or from tenants in common or joint tenants to themselves or some of them, or to themselves or any of them and others, or from a husband and wife, when holding title as community property or otherwise to themselves or to themselves and others or to one of them and to another or others, when expressly declared in the transfer to be a joint tenancy, or when granted or devised to executors or trustees as joint tenants. A joint tenancy in personal property may be created by a written transfer, instrument, or agreement.~~

~~(b) Provisions of this section do not apply to a joint account in a financial institution if Part 1 (commencing with Section 5100) of Division 5 of the Probate Code applies to such account.~~

~~(c) Provisions of this section shall not restrict the creation of a joint tenancy in a bank deposit as provided for in the Bank Act.~~

Comment. The substance of former Section 683 is continued in Sections 745.110 ("joint tenancy" and "property" defined), 745.130 (joint tenancy between spouses), 745.210 (manner of creation of joint tenancy), and 745.230 (joint bank accounts).

Civil Code § 683.1 (repealed)

SEC. 2. Section 683.1 of the Civil Code is repealed.

~~683.1. No contract or other arrangement made after the effective date of this section between any person, firm, or corporation engaged in the business of renting safe/deposit boxes, and the renter or renters of a safe/deposit box, shall create a joint tenancy in or otherwise establish ownership in any of the contents of such safe/deposit box. Any such contract or other arrangement purporting so to do shall be to such extent void and of no effect.~~

Comment. The substance of former Section 683.1 is continued in Section 745.220 (safe deposit rental).

32687

Civil Code § 684 (repealed)

SEC. 3. Section 684 of the Civil Code is repealed.

~~684. A partnership interest is one owned by several persons, in partnership, for partnership purposes.~~

Comment. The substance of former Section 684 is continued in Corporations Code Section 15025 (Uniform Partnership Act).

32688

Civil Code § 686 (amended)

SEC. 4. Section 686 of the Civil Code is amended to read:

686. Every interest created in favor of several persons in their own right is an interest in common, unless except in one of the following situations:

(a) The interest is acquired by them in partnership, for partnership purposes, or unless.

(b) The interest is declared in its creation to be a joint interest, as provided in section six hundred and eighty three, or unless Section 745.210 (manner of creation).

(c) The interest is acquired as community property.

Comment. Section 686 is amended to reflect the repeal of Section 683. See Section 745.210 (manner of creation of joint tenancy).

Civil Code § 687 (repealed)

SEC. 5. Section 687 of the Civil Code is repealed.

687. Community property is property acquired by husband and wife, or either, during marriage, when not acquired as the separate property of either.

Comment. The substance of former Section 687 is continued in Civil Code Sections 5107-5110 (The Family Law Act).

Civil Code § 704 (repealed)

SEC. 6. Section 704 of the Civil Code is repealed.

704. All United States savings bonds or other bonds or obligations of the United States, however designated, now or hereafter issued, which are registered in the names of two persons as co/owners in the alternative, shall, upon the death of either of the registered co/owners, become the sole and absolute property of the surviving co/owner, unless the Federal laws under which such bonds or other obligations were issued or the regulations governing the issuance thereof, made pursuant to such laws, provide otherwise.

All United States savings bonds or other bonds or obligations of the United States, however designated, now or hereafter issued, which are registered in the name of one person payable on death to a named survivor, shall, upon the death of the registered owner, become the sole and absolute property of the surviving beneficiary named therein, unless the Federal laws under which such bonds or other obligations were issued or the regulations governing the issuance thereof, made pursuant to such laws, provide otherwise.

This section shall not be construed to mean that prior to the enactment hereof the law of this State was otherwise than as herein provided.

Comment. The substance of former Section 704 is continued in Article 4 (commencing with Section 745.410) (bonds or obligations of the United States) of Chapter 5.

Civil Code §§ 745.110-745.430 (added)

SEC. 7. Chapter 5 (commencing with Section 745.110) is added to Title 2 of Part 1 of Division 2 of the Civil Code to read:

CHAPTER 5. JOINT TENANCY

Article 1. General Provisions

§ 745.110. Definitions

745.110. Unless the provision or context requires otherwise, the following definitions govern the construction of this chapter:

(a) "Joint tenancy" is the ownership of a joint interest in property by several persons in equal shares.

(b) "Property" includes real and personal property and any interest therein.

Comment. Subdivision (a) of Section 745.110 is intended for drafting convenience. It is keyed to the terminology of Section 682 (ownership of several persons).

Subdivision (b) makes clear that a less than fee interest may be held in joint tenancy and that personal as well as real property may be held in joint tenancy. This continues existing law. See former Section 683.

08944

§ 745.120. Scope of chapter

745.120. This chapter is not intended as a comprehensive statement of the law of joint tenancy. This chapter provides specific rules that govern joint tenancy and does not supersede either the common law of joint tenancy of this state (except to the extent provided by this chapter) or other statutory law governing joint tenancy.

Comment. Section 745.120 makes clear the limited scope of this chapter. For other statutes governing joint tenancy, see, e.g., Sections 5110.510-5110.540 (community property with right of survivorship) and Probate Code Section 5100 (multiple party accounts).

045/221

§ 745.130. Joint tenancy between spouses

745.130. Subject to Article 5 (commencing with Section 5110.510) of Title 8 of Part 5 of Division 4 (community property with right of survivorship), a husband and wife may hold property as joint tenants.

Comment. Section 745.130 continues a portion of former Section 683 to the effect that a joint tenancy may be created by transfer from husband and wife, when holding title as community property or otherwise, to themselves or to themselves and others or to one of them and to another or others, when expressly declared to be a joint tenancy. See Section 745.210 (manner of creation of joint tenancy). For special rules that govern community property in joint tenancy form, see Section 5110.520 (community property in joint tenancy form).

§ 745.190. Transitional provisions

745.190. (a) Subject to subdivision (b), this chapter applies to all property held in joint tenancy, whether the joint tenancy was created before, on, or after the operative date of this act.

(b) This chapter does not affect any of the following:

(1) The validity of a joint tenancy validly created under the law in effect at the time of creation.

(2) The validity of a severance validly made under the law in effect at the time of severance.

(3) The rights of a surviving joint tenant of a decedent under the law in effect at the time of the decedent's death.

Comment. Section 745.190 makes clear the legislative intent to make this chapter fully retroactive to the extent practical, consistent with the reasonable expectations of persons who may have relied upon the creation or termination of a joint tenancy under prior law. Retroactive application is supported by the importance of the state interest served by clarification and modernization of the law of joint tenancy, the generally procedural character of the changes in the law, and the lack of any vested right in a joint tenancy due to the severability of the tenure.

100/875

Article 2. Creation of Joint Tenancy§ 745.210. Manner of creation

745.210. Except as otherwise provided by statute, a joint tenancy in property may be created only by an express declaration in a written instrument, including but not limited to any of the following:

(a) A will or transfer of the property to two or more persons as joint tenants. A transfer may include the transferor as a joint tenant.

(b) An agreement among the owners of the property.

Comment. Section 745.210 continues the substance of a portion of former Section 683. It preserves the long-established California rule that joint tenancy is not a preferred form of property tenure and may only be created by express written declaration. See, *e.g.*, *Dewey v. Lambier*, 7 Cal. 347 (1857). Absent an express declaration, ownership by several persons as tenants in common is presumed or, in the case of married persons, ownership as community property is presumed. See Sections 686 (tenancy in common) and 5110 (community property).

Section 745.210 also preserves the California rule that a "strawman" conveyance is not necessary for creation of a joint tenancy. See, *e.g.*, *Blevins v. Palmer*, 172 Cal. App.2d 324, 342 P.2d 356 (1959). Thus a joint tenancy may be created by a direct transfer from a sole owner to himself or herself and others, or by a direct transfer from tenants in

common or joint tenants to themselves (or some of them), or to themselves (or any of them) and others.

For special rules governing creation of joint tenancies between husband and wife, see Section 5110.520 (community property in joint tenancy form). For special rules governing creation of joint tenancies in safe deposit boxes, see Section 745.220. For special rules governing creation of joint tenancies in financial institution accounts, see Probate Code Section 5100 (multiple party accounts) and Financial Code §§ 852 (joint bank accounts), 7602 and 11204 (joint savings and loan accounts). For special rules governing creation of joint tenancies in automobiles, see Vehicle Code Sections 4150.5 and 5600.5.

31177

§ 745.220. Safe deposit rental

745.220. (a) A contract or other arrangement made between a person engaged in the business of renting safe-deposit boxes and the renter of a safe-deposit box does not create a joint tenancy in, or otherwise establish ownership of, any of the contents of the safe deposit box. Such a contract or other arrangement purporting to do so is to that extent void.

(b) Nothing in this section is intended to limit creation of a joint tenancy in any of the contents of a safe deposit box by an instrument other than a contract or other arrangement described in this section, or to affect the obligation of the depository to deliver a deposit upon the death of the depositor in the manner prescribed in the contract or other arrangement.

Comment. Subdivision (a) of Section 745.220 continues the substance of former Section 683.1. Subdivision (b) clarifies the scope of the section. See Section 1828 (delivery of joint deposit to survivor).

32695

§ 745.230. Joint bank accounts

745.230. This article does not apply to creation of a joint tenancy in an account in a financial institution if another statute provides for the manner of creation of such an account.

Comment. Section 745.230 continues the substance of subdivision (b) and (c) of former Section 683. See Probate Code § 5100 (California Multiple-Party Accounts Law), Financial Code §§ 852 (joint bank accounts), 762 and 11204 (joint savings and loan accounts).

Article 3. Termination of Joint Tenancy

§ 745.310. Severance of joint tenancy

745.310. (a) In addition to any act that terminates ownership of a joint interest in property, a joint tenant may sever the joint tenancy as to the joint tenant's interest by executing a written declaration of severance. Except as provided in subdivision (b), a severance by written declaration is effective at the time of execution of the written declaration.

(b) In the case of joint tenancy of record in real property, a severance by written declaration or otherwise is not effective until it is recorded, unless it is executed by all joint tenants.

Comment. Subdivision (a) of Section 745.310 codifies case law holdings that a "strawman" conveyance is not necessary to sever a joint tenancy by unilateral act of a joint tenant. See, e.g., *Riddle v. Harmon*, 102 Cal. App.3d 524, 162 Cal. Rptr. 530 (1980). The severance is effective only as between the severing joint tenant and the remaining joint tenants at the time of execution of the declaration of severance. In the case of a recorded real property joint tenancy, severance by written declaration or by other means must be recorded to be effective, unless all joint tenants have joined. Subdivision (b). For other means of severance of joint tenancy, see, e.g., Code Civ. Proc. § 872.210 (partition of property owned by several persons concurrently).

32460

§ 745.320. Effect of survivorship

745.320. A surviving joint tenant takes property held in joint tenancy by right of survivorship subject to all encumbrances on the interest of the decedent, including but not limited to the following:

(a) A lien or other security interest, whether voluntary or involuntary. The lien or other security interest burdens the property to an extent not exceeding the proportionate value of the interest of the decedent. The lien or other security interest is subject to the homestead exemption if it would have been subject to a homestead exemption at the time of the decedent's death under Article 4 (commencing with Section 704.710) of Chapter 4 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.

(b) A life estate, leasehold, or other estate or interest. The rights of the parties during the period of the estate or interest are governed, to the extent applicable, by the Legal Estates Principal and Income Law, Chapter 2.6 (commencing with Section 731).

Comment. Subdivision (a) of Section 745.320 overrules the case law principle that an interest in joint tenancy property passes by survivorship free of liens and other security interests. See, e.g., Hamel v. Gootkin, 202 Cal. App.2d 27, 20 Cal. Rptr. 372 (1962) (deed of trust); People v. Nogarr, 164 Cal. App.2d 591, 330 P.2d 858 (1958) (mortgage); Ziegler v. Bonnell, 52 Cal. App.2d 217, 126 P.2d 118 (1942) (judgment lien). The surviving joint tenant is not entitled to exoneration of the lien or other security interest out of estate assets. Estate of Dolley, 265 Cal. App.2d 63, 71 Cal. Rptr. 56 (1968).

Subdivision (b) overrules the case law principle that the reversionary interest or remainder following a life estate or leasehold executed by the decedent passes by survivorship free of the life estate or leasehold. Hammond v. McArthur, 30 Cal.2d 512, 183 P.2d 1 (1947) (life estate); Tenhet v. Boswell, 18 Cal.3d 150, 554 P.2d 330, 133 Cal. Rptr. 10 (1976) (leasehold).

32696

Article 4. Bonds and Obligations of the United States

§ 745.410. Application of article

745.410. (a) This article applies to all United States savings bonds and other bonds or obligations of the United States, however designated, now or hereafter issued.

(b) This article does not apply to the extent the Federal laws under which the bonds or obligations were issued, or the regulations made pursuant to such laws governing the issuance of the bonds or obligations, provide otherwise.

Comment. Article 4 (commencing with Section 745.410) continues the substance of former Section 704. The enactment of this article, and of former Section 704 (the substance of which this article continues), does not constitute a change in, but is declaratory of, the existing law.

31494

§ 745.420. Co-ownership registration

745.420. A bond or obligation of the United States that is registered in the names of two persons as co-owners in the alternative becomes, upon the death of either of the registered co-owners, the sole and absolute property of the surviving co-owner.

Comment. See Comment to Section 745.410.

§ 745.430. Payable on death registration

745.430. A bond or obligation of the United States that is registered in the name of one person payable on death to a named survivor becomes, upon the death of the registered owner, the sole and absolute property of the surviving beneficiary named in the registration.

Comment. See Comment to Section 745.410.

15787

Civil Code § 4800.1 (repealed)

SEC. 8. Section 4800.1 of the Civil Code is repealed.

4800.1- For the purpose of division of property upon dissolution of marriage or legal separation; property acquired by the parties during marriage in joint tenancy form is presumed to be community property. This presumption is a presumption affecting the burden of proof and may be rebutted by either of the following:

(a) A clear statement in the deed or other documentary evidence of title by which the property is acquired that the property is separate property and not community property.

(b) Proof that the parties have made a written agreement that the property is separate property.

Comment. The substance of former Section 4800.1 is continued in Section 5110.520 (community property in joint tenancy form).

31492

Civil Code §§ 5110.510-5110.590 (added)

SEC. 9. Article 5 (commencing with Section 5110.510) is added to Title 8 of Part 5 of Division 4 of the Civil Code, to read:

Article 5. Community Property With Right of Survivorship5110.510. "Community property with right of survivorship" defined

5110.510. Notwithstanding any other statute, community property may be held by married persons subject to a right of survivorship between the married persons. The property shall be known as "community property with right of survivorship" and is created in the manner and has the legal incidents prescribed in this article, subject to a contrary written agreement by the married persons.

Comment. Section 5110.510 is new. It authorizes a variant form of community property tenure to accommodate the common situation of joint tenancy title taken by the spouses in property acquired with community funds. Community property with right of survivorship retains all the characteristics of community property except that it is not subject to testamentary disposition. See Section 5110.540 (legal incidents of community property with right of survivorship). This overrules the case law that community property in joint tenancy form must be either community property or joint tenancy and cannot have some of the attributes of each. See, e.g., *Siberell v. Siberell*, 214 Cal. 767, 7 P.2d 1003 (1932). It should be noted that the parties may vary the provisions of this article by written agreement.

15342

§ 5110.520. Community property in joint tenancy form

5110.520. (a) Property held by married persons during marriage in joint tenancy form is presumed to be community property with right of survivorship.

(b) The presumption established by this section is a presumption affecting the burden of proof and may be rebutted by the following:

(1) A clear statement in the deed or other documentary evidence of title by which the property is acquired that the property is separate property and not community property.

(2) Proof that the married persons have made a written agreement that the property is separate property.

(c) The presumption established by this section may not be rebutted by tracing the contributions to the acquisition of the property to a separate property source. Nothing in this subdivision limits the right of a party to reimbursement for separate property contributions pursuant to Section 4800.2.

Comment. Section 5110.520 overrules the presumption of former Section 683 that community property held in joint tenancy form is joint tenancy. Instead, property taken in joint tenancy form during marriage is presumed to be community property with right of survivorship. Section 5110.520 is consistent with former Section 4800.1 (for purposes of division, property acquired in joint tenancy form during marriage presumed to be community property). The presumption of Section 5110.520 may be overcome by contrary evidence of the express intention of the parties in the form of a written statement, in the deed or otherwise, negating the community character and affirming the separate character of the property, or simply affirming the community character without a survivorship right. Subdivision (b); Section 5110.510. This will help ensure that any transmutation of community property to separate property by the spouses is in fact intentional. The parties may also sever the survivorship right during marriage. Section 5110.540(b). Ownership of property presumed to be community pursuant to this section is qualified by a reimbursement right at dissolution for separate property contribu-

tions to its acquisition. Section 4800.2. See also Section 5110.540 (legal incidents of community property with right of survivorship).

24839

§ 5110.530. Community property subject to declaration of survivorship

5110.530. Community property held by married persons other than in joint tenancy form but subject to an express declaration in a written instrument of a right of survivorship between the married persons is community property with right of survivorship.

Comment. Section 5110.530 is new. It is consistent with the law of other community property jurisdictions that permit tenure of community property with right of survivorship by agreement or by conveyance. See, e.g., Nev. Rev. Stat. § 111.064(2) (1981) (Nevada conveyance of community property with right of survivorship).

31493

§ 5110.540. Legal incidents of community property with right of survivorship

5110.540. Community property with right of survivorship has the following legal incidents:

(a) Except as otherwise provided in subdivision (b), the property is community property for all purposes including but not limited to management and control, liability for debts, taxation, and division.

(b) The property is not subject to testamentary disposition but passes to the surviving spouse in the same manner and with the same effect as community property that passes to the surviving spouse by intestate succession. The right of survivorship may be terminated, in the case of property held by the married persons in joint tenancy form, by severance in the manner prescribed by law for severance of joint tenancy, and in the case of property held by the married persons other than in joint tenancy form, by an express declaration in a written instrument executed by either spouse. Severance or other termination of the right of survivorship does not otherwise affect the community character of the property or the interests of the married persons in the property.

Comment. Section 5110.540 makes clear that community property with right of survivorship has the attributes its title implies--it is community property that passes to the surviving spouse by intestate succession and not by will. This reverses case law that treated community property in joint tenancy form as either community property or joint tenancy, depending upon the intent of the parties. See, e.g., discussion in Sterling, Joint Tenancy and Community Property in California, 14 Pac. L.J. 927 (1983). Separate property contributions to the acquisition of

the property may be reimbursed at dissolution pursuant to Section 4800.2. Otherwise, the property is community for all purposes and receives community property treatment at death, including tax and creditor treatment and passage without probate (unless probate is elected by the surviving spouse). Prob. Code § 202.

31491

§ 5110.550. Joint bank accounts

5110.550. This article does not apply to a joint account in a financial institution if Part 1 (commencing with Section 5100) of Division 5 of the Probate Code applies to the account.

Comment. Section 5110.550 makes clear that the Probate Code provisions governing joint accounts prevail over this chapter. See Prob. Code § 5305 (presumption that sums on deposit are community property).

24840

§ 5110.590. Transitional provisions

5110.590 (a) As used in this section, "operative date" means January 1, 1985.

(b) Subject to subdivisions (c) and (d), this article applies to all property acquired by married persons before, on, or after the operative date.

(c) This article does not apply to property acquired by married persons before the operative date until one year after the operative date, regardless whether payments on or additions to the property are made after the operative date. During this period the property is governed by the law applicable before the operative date, and to this extent the law applicable before the operative date is preserved.

(d) This article does not apply to any transaction involving the property that occurred before the operative date, including but not limited to inter vivos or testamentary disposition of the property by a married person and division of the property at dissolution of marriage. Such a transaction is governed by the law applicable before the operative date.

Comment. Section 5110.590 makes clear the legislative intent to make this article fully retroactive to the extent practical, consistent with protection of the security of transactions involving the spouses or third person that occurred before the operative date. Retroactive application is supported by the importance of the state interest served by clarification and modernization of the law of joint tenancy and commu-

nity property, the generally procedural character of the changes in the law, and the lack of a vested right in joint tenancy property due to the severability of the tenure. In addition, Section 5110.590 provides a one-year grace period after the operative date during which persons who acquired property before the operative date may make any necessary title changes or agreements or other arrangements concerning the property.

30693

Health & Safety Code § 8627 (amended)

SEC. 10. Section 8627 of the Health and Safety Code is amended to read:

8627. Cemetery property held in joint tenancy is exempt from the provisions of the Probate Code of Civil Procedure relating to proceedings for establishing the fact of death of a person whose death affects title to real or an interest in property.

Comment. Section 8627 is amended to correct an obsolete reference. See Probate Code §§ 1170-1175 (establishment of fact of death).