

The California Family Code

Division 4. Rights And Obligations During Marriage

PART 1. GENERAL PROVISIONS

Chapter 2. Relation of Husband And Wife

720. Husband and wife contract toward each other obligations of mutual respect, fidelity, and support.

721. (a) Subject to subdivision (b), either husband or wife may enter into any transaction with the other, or with any other person, respecting property, which either might if unmarried.

(b) Except as provided in Sections 143, 144, 146, 16040, and 16047 of the Probate Code, in transactions between themselves, a husband and wife are subject to the general rules governing fiduciary relationships which control the actions of persons occupying confidential relations with each other. This confidential relationship imposes a duty of the highest good faith and fair dealing on each spouse, and neither shall take any unfair advantage of the other. This confidential relationship is a fiduciary relationship subject to the same rights and duties of nonmarital business partners, as provided in Sections 16403, 16404, and 16503 of the Corporations Code, including, but not limited to, the following:

(1) Providing each spouse access at all times to any books kept regarding a transaction for the purposes of inspection and copying.

(2) Rendering upon request, true and full information of all things affecting any transaction which concerns the community property. Nothing in this section is intended to impose a duty for either spouse to keep detailed books and records of community property transactions.

(3) Accounting to the spouse, and holding as a trustee, any benefit or profit derived from any transaction by one spouse without the consent of the other spouse which concerns the community property.

Part 2. Characterization of Marital Property

Chapter 5. Transmutation of Property

850. Subject to Sections 851 to 853, inclusive, married persons may by agreement or transfer, with or without consideration, do any of the following:

- (a) Transmute community property to separate property of either spouse.
- (b) Transmute separate property of either spouse to community property.
- (c) Transmute separate property of one spouse to separate property of the other spouse.

851. A transmutation is subject to the laws governing fraudulent transfers.

852. (a) A transmutation of real or personal property is not valid unless made in writing by an express declaration that is made, joined in, consented to, or accepted by the spouse whose interest in the property is adversely affected.

(b) A transmutation of real property is not effective as to third parties without notice thereof unless recorded.

(c) This section does not apply to a gift between the spouses of clothing, wearing apparel, jewelry, or other tangible articles of a personal nature that is used solely or principally by the spouse to whom the gift is made and that is not substantial in value taking into account the circumstances of the marriage.

(d) Nothing in this section affects the law governing characterization of property in which separate property and community property are commingled or otherwise combined.

(e) This section does not apply to or affect a transmutation of property made before January 1, 1985, and the law that would otherwise be applicable to that transmutation shall continue to apply.

853. (a) A statement in a will of the character of property is not admissible as evidence of a transmutation of the property in a proceeding commenced before the death of the person who made the will.

(b) A waiver of a right to a joint and survivor annuity or survivor's benefits under the federal Retirement Equity Act of 1984 (Public Law 98-397) is not a transmutation of the community property rights of the person executing the waiver.

(c) A written joinder or written consent to a nonprobate transfer of community property on death that satisfies Section 852 is a transmutation and is governed by the law applicable to transmutations and not by Chapter 2 (commencing with Section 5010) of Part 1 of

Division 5 of the Probate Code.

Part 4. Management And Control of Marital Property

1100. (a) Except as provided in subdivisions (b), (c), and (d) and Sections 761 and 1103, 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 for less than fair and reasonable value, without the written consent of the other spouse. This subdivision does not apply to gifts mutually given by both spouses to third parties and to gifts given by one spouse to 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 1102, 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. Remedies for the failure by a managing spouse to give prior written notice as required by this subdivision are only as specified in Section 1101. 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 with respect to the other spouse in the management and control of the community assets and liabilities in accordance with the general rules governing fiduciary relationships which control the actions of persons having relationships of personal confidence as specified in Section 721, until such time as the assets and liabilities have been divided by the parties or by a court. This duty includes the obligation to make full disclosure to the other spouse of all material facts and information regarding the existence, characterization, and valuation of all assets in which the community has or may have an interest and debts for which the community is or may be liable, and to provide equal access to all information, records, and books that pertain to the value and character of those assets and debts, upon request.

1101. (a) A spouse has a claim against the other spouse for any breach of the fiduciary duty that results in impairment to the claimant spouse's present undivided one-half interest in the community estate, including, but not limited to, a single transaction or a pattern or series of transactions, which transaction or transactions have caused or will cause a detrimental impact to the claimant spouse's 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.

(g) Remedies for breach of the fiduciary duty by one spouse, including those set out in Sections 721 and 1100, shall include, but not be limited to, an award to the other spouse of 50 percent, or an amount equal to 50 percent, of any asset undisclosed or transferred in breach of the fiduciary duty plus attorney's fees and court costs. The value of the asset shall be determined to be its highest value at the date of the breach of the fiduciary duty, the date of the sale or disposition of the asset, or the date of the award by the court.

(h) Remedies for the breach of the fiduciary duty by one spouse, as set forth in Sections 721 and 1100, when the breach falls within the ambit of Section 3294 of the Civil Code shall include, but not be limited to, an award to the other spouse of 100 percent, or an amount equal to 100 percent, of any asset undisclosed or transferred in breach of the fiduciary duty.

1102. (a) Except as provided in Sections 761 and 1103, 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 a duly authorized agent, must join in executing any instrument by which that community real property or any interest therein is leased for a longer period than one year, or is sold, conveyed, or encumbered.

(b) Nothing in this section 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.

(c) Notwithstanding subdivision (b):

(1) 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.

(2) 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.

(d) 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 that instrument in the recorder's office in the county in which the land is situated.

(e) Nothing in this section precludes either spouse from encumbering his or her interest in community real property, as provided in Section 2033, to pay reasonable attorney's fees in order to retain or maintain legal counsel in a proceeding for dissolution of marriage, for nullity of marriage, or for legal separation of the parties.

1103. (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 or a disposition of community personal property without a valuable consideration as required by Section 1100 or to a sale, conveyance, or encumbrance of community personal property for

which a consent is required by Section 1100, the procedure for that 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 1102, the procedure for that lease, sale, conveyance, or encumbrance is that prescribed in Part 6 (commencing with Section 3000) of Division 4 of the Probate Code.

Part 5. Marital Agreements

Chapter 1. General Provisions

1500. The property rights of husband and wife prescribed by statute may be altered by a premarital agreement or other marital property agreement.

1501. A minor may make a valid premarital agreement or other marital property agreement if the minor is emancipated or is otherwise capable of contracting marriage.

1502. (a) A premarital agreement or other marital property agreement that is executed and acknowledged or proved in the manner that a grant of real property is required to be executed and acknowledged or proved may be recorded in the office of the recorder of each county in which real property affected by the agreement is situated.

(b) Recording or nonrecording of a premarital agreement or other marital property agreement has the same effect as recording or nonrecording of a grant of real property.

1503. Nothing in this chapter affects the validity or effect of premarital agreements made before January 1, 1986, and the validity and effect of those agreements shall continue to be determined by the law applicable to the agreements before January 1, 1986.

Chapter 3. Agreements Between Husband And Wife

1620. Except as otherwise provided by law, a husband and wife cannot, by a contract with each other, alter their legal relations, except as to property.

Division 6. Nullity, Dissolution, And Legal Separation

Part 1. General Provisions

Chapter 9. Disclosure of Assets And Liabilities

2102. (a) From the date of separation to the date of the distribution of the community or quasi-community asset or liability in question, each party is subject to the standards provided in Section 721, as to all activities that affect the assets and liabilities of the other party, including, but not limited to, the following activities:

(1) The accurate and complete disclosure of all assets and liabilities in which the party has or may have an interest or obligation and all current earnings, accumulations, and expenses, including an immediate, full, and accurate update or augmentation to the extent there have been any material changes.

(2) The accurate and complete written disclosure of any investment opportunity, business opportunity, or other income-producing opportunity that presents itself after the date of separation, but that results from any investment, significant business activity outside the ordinary course of business, or other income-producing opportunity of either spouse from the date of marriage to the date of separation, inclusive. The written disclosure shall be made in sufficient time for the other spouse to make an informed decision as to whether he or she desires to participate in the investment opportunity, business, or other potential income-producing opportunity, and for the court to resolve any dispute regarding the right of the other spouse to participate in the opportunity. In the event of nondisclosure of an investment opportunity, the division of any gain resulting from that opportunity is governed by the standard provided in Section 2556.

(3) The operation or management of a business or an interest in a business in which the community may have an interest.

(b) From the date that a valid, enforceable, and binding resolution of the disposition of the asset or liability in question is reached, until the asset or liability has actually been distributed, each party is subject to the standards provided in Section 721 as to all activities that affect the assets or liabilities of the other party. Once a particular asset or liability has been distributed, the duties and standards set forth in Section 721 shall end as to that asset or liability.

(c) From the date of separation to the date of a valid, enforceable, and binding resolution of all issues relating to child or spousal support and professional fees, each party is subject to the standards provided in Section 721 as to all issues relating to the support and fees, including immediate, full, and accurate disclosure of all material facts and information regarding the income or expenses of the party.

Chapter 10. Relief From Judgment

2122. The grounds and time limits for a motion to set aside a judgment, or any part or parts thereof, are governed by this section and shall be one of the following:

(a) Actual fraud where the defrauded party was kept in ignorance or in some other manner was fraudulently prevented from fully participating in the proceeding. An action or motion based on fraud shall be brought within one year after the date on which the complaining party either did discover, or should have discovered, the fraud.

(b) Perjury. An action or motion based on perjury in the preliminary or final declaration of disclosure, the waiver of the final declaration of disclosure, or in the current income and expense statement shall be brought within one year after the date on which the complaining party either did discover, or should have discovered, the perjury.

(c) Duress. An action or motion based upon duress shall be brought within two years after the date of entry of judgment.

(d) Mental incapacity. An action or motion based on mental incapacity shall be brought within two years after the date of entry of judgment.

(e) As to stipulated or uncontested judgments or that part of a judgment stipulated to by the parties, mistake, either mutual or unilateral, whether mistake of law or mistake of fact. An action or motion based on mistake shall be brought within one year after the date of entry of judgment.

(f) Failure to comply with the disclosure requirements of Chapter 9 (commencing with Section 2100). An action or motion based on failure to comply with the disclosure requirements shall be brought within one year after the date on which the complaining party either discovered, or should have discovered, the failure to comply.

Division 9. Support

Part 1. Definitions And General Provisions

Chapter 3. Support Agreements

Article 1. General Provisions

3580. Subject to this chapter and to Section 3651, a husband and wife may agree, in writing, to an immediate separation, and may provide in the agreement for the support of either of them and of their children during the separation or upon the dissolution of their marriage. The mutual consent of the parties is sufficient consideration for the agreement.

Article 2. Child Support

3585. The provisions of an agreement between the parents for child support shall be deemed to be separate and severable from all other provisions of the agreement relating to property and support of the wife or husband. An order for child support based on the agreement shall be law-imposed and shall be made under the power of the court to order child support.

3586. If an agreement between the parents combines child support and spousal support without designating the amount to be paid for child support and the amount to be paid for spousal support, the court is not required to make a separate order for child support.

3587. Notwithstanding any other provision of law, the court has the authority to approve a stipulated agreement by the parents to pay for the support of an adult child or for the continuation of child support after a child attains the age of 18 years and to make a support order to effectuate the agreement.

Article 3. Spousal Support

3590. The provisions of an agreement for support of either party shall be deemed to be separate and severable from the provisions of the agreement relating to property. An order for support of either party based on the agreement shall be law-imposed and shall be made under the power of the court to order spousal support.

3591. (a) Except as provided in subdivisions (b) and (c), the provisions of an agreement for the support of either party are subject to subsequent modification or termination by court order.

(b) An agreement may not be modified or terminated as to an amount that accrued before the date of the filing of the notice of motion or order to show cause to modify or terminate.

(c) An agreement for spousal support may not be modified or revoked to the extent that a written agreement, or, if there is no written agreement, an oral agreement entered into in open court between the parties, specifically provides that the spousal support is not subject to modification or termination.

3592. If an obligation under an agreement for settlement of property to a spouse or for support of a spouse is discharged in bankruptcy, the court may make all proper orders for the support of the spouse, as the court determines are just, having regard for the circumstances of the parties and the amount of the obligations under the agreement that are discharged.

3593. Sections 3590 and 3591 are effective only with respect to a property settlement agreement entered into on or after January 1, 1970, and do not affect an agreement entered into before January 1, 1970, as to which Chapter 1308 of the Statutes of 1967 shall apply.

Part 3. Spousal Support

Chapter 1. Duty to Support Spouse

4300. Subject to this division, a person shall support the person's spouse.

4301. Subject to Section 914, a person shall support the person's spouse while they are living together out of the separate property of the person when there is no community property or quasi-community property.

4302. A person is not liable for support of the person's spouse when the person is living separate from the spouse by agreement unless support is stipulated in the agreement.

4303. (a) The obligee spouse, or the county on behalf of the obligee spouse, may bring an action against the obligor spouse to enforce the duty of support.

(b) If the county furnishes support to a spouse, the county has the same right as the spouse to whom the support was furnished to secure reimbursement and obtain continuing support. The right of the county to reimbursement is subject to any limitation otherwise imposed by the law of this state.

(c) The court may order the obligor to pay the county reasonable attorney's fees and court costs in a proceeding brought by the county under this section.