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The Effects of Declining Value on Community Property Division

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THE EFFECTS OF DECLINING VALUE ON COMMUNITY PROPERTY DIVISION

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A. INTRODUCTION.

The serious decline in the real estate market has created distressed real estate assets that impact how we, as family law lawyers, must deal with the already-complex issues involving real estate in our cases. These issues arise at various stages in the litigation, including at the order to show cause, between the order to show cause and the time of trial, and of course at trial. These distressed real estate assets require us to examine how we deal with *Watts* and *Epstein* issues, early disposition orders and valuation date. In addition, distressed real estate seriously impacts reimbursement rights and characterization issues, such as the *Moore/Marsden* allocations. This program will examine the impact of distressed real estate on these family law issues.

1. Two Types of Distressed Properties

This presentation will focus on two types of distressed properties:

(a) "Upside Down Property"

If a property's mortgage balances exceed its fair market value, we will refer to it as an "Upside Down Property."

(b) "Doomed Property"

If the parties cannot afford to pay a property's monthly principal, interest, taxes and insurance (PITI), they will eventually be forced to sell it or lose it to foreclosure. We will refer to such a property as a "Doomed Property."

Not every Upside Down Property is Doomed, and not every Doomed Property is Upside Down. Establishing that a property is Upside Down and/or Doomed is an issue of fact.

2. Distressed Property Issues Arise at Three Stages During the Dissolution

(a) Distressed property issues at OSC:

(1) Exclusive possession orders (FC§2047(a), FC§6324 – orders after notice)

"To stay or not to stay, that is the question"

(2) Debt payment orders (FC§2047(a), FC§6324)

"To pay or not to pay, that is the question"

(3) *Epstein* credit orders

(4) *Watts* charge orders

(b) Distressed property issues between OSC and trial:

(1) Trial setting and foot dragging

(2) Early property disposition orders (FC§2108-authority to liquidate assets)

(c) Distressed property issues for trial:

(1) Property valuation date (FC§2552 – valuation date)

(2) Characterization and Reimbursement Issues

FC§2640 Issues
Moore/Marsden Issues

(3) Division and Disposition Issues

(a) How an Upside Down property should be recognized on the community property balance sheet.

i. Should a party receive credit for the negative equity in a property or only zero value for that property?

(b) What to do with the distressed property at trial – the court's authority and discretion

i. Award the property to one party

ii. Order the property sold or abandoned

iii. Defer the sale

3. Three Types of Debt

This presentation will deal with three common types of debt associated with real estate.

(a) Recourse Debt

The creditor may obtain a judgment against the debtor for the balance of unpaid debt remaining after application of the value of the security. Note: This is not applicable to loans secured by real estate.

Example:

- A vehicle loan

(b) Non-Recourse Debt

The creditor may not obtain a judgment against the debtor for the balance of unpaid debt remaining after application of the value of the security.

Example:

- A purchase money loan secured by a trust deed against a dwelling (CCP §580(b))
- A typical purchase money mortgage loan secured against a dwelling and held by a sold-out junior lienholder (*Roseleaf Corp. v. Chierighino* (1963) 59 Cal.2d 35)

(c) "Rarely-Recourse" Debt

Only with difficulty may the creditor obtain a judgment against the debtor for the unpaid debt balance. A "rarely-recourse debt" is obtained only through judicial foreclosure, which is more expensive and time-consuming than non-judicial foreclosure. A judicial foreclosure judgment is subject to the borrower's 12-month right of redemption (CCP §729.030(b)) if the lender has obtained a deficiency judgment (CCP §729.010(a)) against the borrower.

Examples:

- A non-purchase money mortgage loan (CCP §§580(b), (d))
- A purchase money mortgage loan secured against a non-dwelling (CCP §§580(b), (d))

4. <u>Possible Reasons to Pay a Debt</u>

(a) Avoid a collection lawsuit

(b) Protect credit score

(c) Avoid cancellation of debt tax liability

B. IRV'S AND OTTO'S GOALS AT EACH STAGE OF THE DISSOLUTION (EVERYBODY WANTS SOMETHING)

In this presentation "Irv" will be the "in spouse" or domestic partner and "Otto" will be the "out spouse" or domestic partner. Also assume that Blackacre, the community property family residence, is both Upside Down and Doomed. Assume that at the order to show cause Irv is requesting exclusive temporary possession of Blackacre and the court is considering orders for the payment of Blackacre's principal, interest, taxes and insurance (PITI payments).

1. <u>Distressed Property Issues at OSC</u>:

(a) Irv's goals at OSC:

(1) Wants order for temporary exclusive possession of Blackacre

(2) Does not want order requiring him to pay PITI on Blackacre

(3) Wants order for *Epstein* credits

(4) Does not want order for *Watts* charges

(b) Otto's goals at OSC:

(1) Does not want Irv in temporary exclusive possession

(2) Wants order requiring Irv to pay PITI on Blackacre

(3) Does not want Irv to receive *Epstein* credits

(4) Wants Irv to owe *Watts* charges to community

2. <u>Distressed Property Issues Between OSC and Trial</u>

(a) Irv's goals between OSC and trial:

(1) Wants a trial date as far in the future as possible

(2) Does not want an early disposition of property order

(b) Otto's Goals Between OSC and trial:

(1) Wants a trial date as soon as possible

(2) Wants an early disposition of property order

3. <u>Distressed Property Issues for Trial</u>

(a) Irv's goals for trial:

(1) Wants Blackacre valued as of date of trial

(2) Wants to be awarded Blackacre (presenters' assumption for discussion purposes)

(3) Wants credit for Blackacre's negative equity

(4) Wants favorable rulings on FC§2640 claims and *Moore/Marsden* issues

(b) Otto's goals for trial:

(1) Wants alternate valuation – between separation and trial

(2) Disposition of Blackacre:

- If Blackacre awarded to Irv, wants Irv to take it at zero value
- If Blackacre not to be awarded to Irv at zero value, wants Blackacre sold or abandoned

(3) Wants favorable rulings on FC§2640 claims and *Moore/Marsden* issues

C. APPROACHES TO THESE ISSUES AT EACH STAGE

1. Distressed property issues at OSC.

(a) Exclusive possession orders (FC§2047(a), FC§6324 – orders after notice)

(1) Irv contends that pursuant to FC§2047(a) the court may, after notice and a hearing, issue orders for temporary use, possession and control of real property under FC§6324.

(2) Otto contends the court should not grant temporary use and possession of Blackacre to Irv because it is a doomed property and it should be sold. Otto contends that if the court were to award temporary use and possession to Irv, it should be without prejudice to Otto's anticipated motion for a pretrial disposition of Blackacre.

(b) Expense payment orders (FC§2047(a), FC§6324)

(1) Irv contends that he should not be ordered to pay PITI on Blackacre because Blackacre is upside down and the payment of PITI will not be any benefit to the community.

(2) Otto contends that Irv should be required to pay PITI in that Otto does not, at this stage, want his credit damaged, wants to work out a loan modification or a short sale and failure to pay

PITI may make those possible resolutions more difficult [the opposite may also be true: the lender may be unwilling to entertain loan modification or short sale if PITI payments ARE current!].

(c) *Epstein* credit orders

(1) If Irv is ordered to make PITI payments, he wants credit, contending existing precedent grants him *Epstein* credits for his post-separation PITI payments [*In Re: Marriage of Epstein* (1979) 24 Cal.3d 76, 84] where the court held that a "no reimbursement rule" would discourage payment of community debts after separation, exacerbate financial and emotional disruption and perhaps result in impairing the credit reputations of both spouses.

(2) Otto contends that existing precedent is not applicable because Blackacre is a doomed property and the *Epstein* credit would, in essence, require Otto to pay a portion of a payment for which he will never receive any benefit.

(d) *Watts* charge orders

(1) Irv contends he should not be subject to a *Watts* charge because, as an upside down property, the community has no investment/equity in the property and should receive no return. Irv also contends that as a doomed property, once in default the community would not have the right to receive rents because of the trust deeds' "assignment of rents" clause.

(2) Otto contends existing precedent requires Irv to pay the community *Watts* charges for Irv's post-separation use of Blackacre.

(e) *Watts* and *Epstein* issues should be resolved at the order to show cause.

(1) Both Irv and Otto want the court to make *Watts* and *Epstein* orders at the order to show cause citing *In Re: Marriage of Hebbring* (1989) 207 Cal.App.3d 1260.

- In *Hebbring*, Justice King in discussing whether the court should rule on the question of reimbursement at the order to show cause stage stated:

"Finally, the worst alternative is simply to defer the issue of reimbursement for decision by the trial judge. Although in our experience this practice is followed in many instances, it offers no help to the parties and, indeed, can be a considerable hindrance to settlement…Just as importantly, if the judge issuing a temporary support order simply defers (by order or inaction) the question of reimbursement to the trial judge, it creates a roadblock to settlement by adding one more serious issue to those already in dispute. On the other hand, if the order specifies who is to make which payments on community debts and which are to be reimbursed and which are not, the order fully settles the reimbursement issue and will usually assist the parties in settling other issues."

2. <u>Distressed property issues between OSC and trial</u>.

(a) Trial setting and foot dragging

(1) Here, Irv is incentivized to do everything he can to delay the setting of trial in hopes that the real estate market continues to decline and he can hopefully retain Blackacre at a lower fair market value and greater negative equity. This would allow Irv to receive other assets or an equalizing payment from Otto.

(2) Otto wants the trial set as quickly as possible or, in the alternative, an early disposition order discussed below. Otto is concerned about further losses to the community and building *Epstein* credits in favor of Irv.

(b) Early property disposition orders (FC§2108-authority to liquidate assets)

(1) Irv contends that pursuant to *Lee v. Superior Court (Lee)* (1976) 63 Cal.App.3d 705, a pretrial disposition order should be issued only where:

(i) It is necessary for a community asset to be sold (in *Lee* case a parcel of real estate) in order to preserve another community asset (in *Lee* case a business).

(ii) The court has made adequate safeguards to protect the interests of the spouse opposing the sale.

The *Lee* court held:

"We hold, in brief, that the trial court could, with appropriate safeguards, have required one potential community asset to be sold to save another such asset. Thus, nothing in the Family Law Act would have prohibited the trial court from conducting a partial trial limited to a determination of the community or separate character of the apartment building and the existence of other community assets sufficient to offset any loss [wife] might incur from the loss of proceeds from the apartment building."

(2) Otto contends that *Lee v. Superior Court* was superseded by the 1994 passage of FC§2108, which states:

"At any time during the proceeding, the court has the authority, on application of a party and for good cause, to order the liquidation of community…assets so as to avoid unreasonable market or investment risks, given the relative nature, scope and extent of the community estate."

Otto contends that FC§2108 empowers the trial court to issue a pretrial order that Blackacre be either:

(i) Awarded to a spouse and valued at the date of the disposition to that spouse,

(ii) Sold to a third party, or

(iii) Abandoned to foreclosure.

3. <u>Distressed property issues for trial</u>.

a. Property valuation date (FC§2552)

Assuming Blackacre has dropped in value from date of separation to date of trial and Irv wants to retain Blackacre in the division of community property. Irv contends Blackacre should be valued as of the date of trial, pursuant to FC§2552(a):

"… except as provided in subdivision (b), the court shall value the assets and liabilities as near as practicable to the time of trial."

(2) Otto contends that Blackacre should be valued at the date of separation pursuant to FC§2552(b):

"…the court, for good cause shown, may value…assets and liabilities at a date after separation and before trial to accomplish an equal division of the community estate of the parties in an equitable manner."

Otto contends that good cause exists because Irv has employed unfair gambits to intentionally delay the trial as long as possible (and wants to retain Blackacre and be given credit for its negative equity) Blackacre should be valued at the date of separation, or at least the date that Irv was awarded exclusive temporary use and possession.

(3) Irv counters that a delay in bringing a case to trial does not by itself justify an alternate valuation date citing *In Re: Marriage of Priddis* (1982) 132 Cal.App.3d 349.

In *Priddis*, husband had exclusive occupancy of the family residence and paid its mortgage during the parties' 11 year separation. Husband argued that he should receive the residence at the date of separation value. The trial court agreed because of prolonged delay in bringing the case to trial. The Court of Appeal reversed holding there was nothing in the fact of a lengthy separation alone that necessitates an alternate valuation date to accomplish the equal and equitable division of community property. The court held that under such circumstances, when the value of community assets was affected by inflation or other market factors, the fairest equal division in those assets lets the parties share equally in either gains or losses.

Irv also contends that the traditional reasoning for a date of separation valuation (i.e. post-separation efforts such as involved in a professional practice – see *In Re: Marriage of Green* (1989) 213 Cal.App.3d 14) is not generally applicable to valuation of real property.

Irv also contends that based upon the rationale of *In Re: Marriage of Lehman* (1998) 18 Cal.4th 169, (the parties should share in any increase, decrease or enhancement of benefits related to the community property interest in the employee's retirement plan that are not the result of post-separation earnings) supports a date of trial valuation of the declining real estate as both parties must share in increases and decreases in value that result from market forces.

(4) Otto counters that the rationale of *In Re: Marriage of Hokanson* (1998) 68 Cal.App.4th 987 (wife's unreasonable failure to cooperate with the court's orders for the sale of a house is a breach of fiduciary duty) supports an alternate valuation date under FC§2552(b) because that section allows the court to accomplish an equal division of the community estate "…in an equitable manner."

b. Characterization and Reimbursement Issues

These include what impact distressed real estate has on the FC§2640 reimbursement rights and the *Moore/Marsden* characterization issues. Note the characterization and reimbursement issues will be discussed separately in section 4 "Characterization and Reimbursement Issues in a Down Real Estate Market" below.

c. Division and Disposition Issues

(1) These issues will be discussed in section 5 below. These issues include:

(a) Should a party being awarded an Upside Down property receive credit for the negative equity in determining an equal division of community property or should that asset be awarded only at a zero value?

(b) In determining how to treat distressed real estate on the community property balance sheet, should it be treated as an aggregate asset, i.e. fair market value less balance of liens to calculate the equity as positive or negative, or should the asset and the liability be isolated on the balance sheet.

(c) The court's authority in dealing with the distressed real estate.

(i) How judicial discretion is impacted if the entire community estate is negative (FC§2622(d)).

(ii) The limitations on judicial discretion provided in *In Re: Marriage of Cream* (1993) 13 Cal.App.4th 81.

(iii) The equal division requirements of FC§2550.

(iv) Are there elements involved in distressed real estate that are too speculative to be considered in determining an equal division of community property.

4. Characterization and Reimbursement Issues in a Down Real Estate Market

a. FC§2640(b) Reimbursement Rights.

(1) Separate property rights in community property real estate – the 2640(b) reimbursement right.

(a) Reimbursement is limited to the net equity in the property at the time of the property division.

(i) "Net equity" defined.

- Fair market value less liens at the time of the division of property.

(ii) 2640(b) reimbursement rights have "special status" but are not exempt from erosion.

- The purpose of this special status is to encourage the separatizer to make capital available for community property investments with no right to appreciation or interest, in exchange for special status.

- This special status provides that when equity in the property declines, the separatizer's 2640 reimbursement rights are the last to be diminished.

(iii) Additional loans secured by the property reduce the net equity and therefore can diminish the 2640(b) reimbursement rights.

- Home equity loans and home equity lines of credit are no exception to this rule. The statute limits separate property reimbursement to the net equity in the property at the time of division.

- Understanding that the 2640(b) right of reimbursement is a "burden" and not a property right is important to understanding this principal.

- Prior to property division, all equity in the property is community property and can be accessed by the community for any purpose. FC 2640 does not limit the community's access to the community property equity.

- The purpose of a loan does not affect the fact that a loan secured by the property reduces the net equity of that property.

- However, if the loan proceeds are used to contribute, improve or pay down a loan on another community asset, some portion of the 2640 burden is allocated to another asset or may be recoverable from another asset. *Walrath*/SB1407.

(iv) Think of 2640 reimbursement rights as similar to a partnership capital contribution.

- Such capital contributions are recorded as part of the capital account. The capital account earns no interest and does not participate pro rata in the profits of the partnership.

- Capital accounts get repaid before the partners divide the partnership profits.

- Capital accounts are not repaid in full if there are insufficient partnership assets after the payment of liabilities.

- The partnership is authorized to expend monies for the partnership benefit even if it reduces funds available to repay the capital accounts.

(v) An example of the decrease in equity and how it affects 2640 reimbursement rights.

Purchase Data	FMV at Purchase	$500k
	C/P 1st Mortgage – Interest Only	$400k
	S/P Contribution (down payment)	**$100k**
Subsequent Increase in Value	Current FMV	$700k
	Existing Loan Still	$400k
	Net Equity	$300k
	Amount of 2640 Burden Remains	**$100k**
Subsequent Home Equity Loan Decreases Equity	FMV	$700k
	1st Loan Balance	$400k
	HELOC – Spent Not Invested	$250k
	Net Equity	$ 50k
	Amount of Existing 2640 Burden	**$ 50k**
Subsequent Decline in Value	FMV Reduced to:	$600k
	1st Loan Balance	$400k
	HELOC Balance	$250k
	Net Equity	<-$ 50k>
	Remaining 2640 Burden	**$ 0**

Note: A subsequent increase in value or reduction in balances owing on the secured debts will increase equity and restore the 2640 burden, up to the original amount.

(b) *Walrath* issues – allocating the 2640 burden among multiple properties.

(i) Applies when equity that is burdened by a 2640 reimbursement right is used to acquire, improve or pay down loan principal on another community property asset.

- The effect under *Walrath* is a forced pro rata allocation of the 2640 burden between the first community asset and the second community asset. *Walrath* is not a voluntary allocation.

- This is an important holding in *Walrath* because recovery of the 2640 reimbursement

was limited to the post allocation separate property burden in each property, subject to the net equity in that property.

(c) *Walrath* issues – what properties are available to satisfy the 2640 claim at the time of property division?

(i) The *Walrath* decision.

- Justice Brown for the majority – limited to the amount of 2640 burden allocated into each property, limited to the net equity of that property.

- Justice Kennard's dissent – from any equity in the group of properties containing any of the allocated 2640 burden – but limited to <u>amount transferred into</u> the new property.

- Judge Baxter's dissent – from any property in the community estate.

(ii) Amendments to 2640(b) (SB 1407) may have changed the *Walrath* rule concerning what properties are available to recoup the 2640 reimbursement right.

- The *Walrath* decision rests upon an interpretation of then existing Family Code § 2640(b). Although there was little publicity about it, SB 1407 [which added 2640(c) – reimbursement for separate contributions to the other spouse's separate estate] amended the language of Family Code § 2640(b) by deleting the very words the majority in *Walrath* relied upon. As amended, 2640(b) provides:

Note: Material in brackets **[ ]** was deleted by SB 1407 and material in ***bold/italics*** was added by SB 1407.

"**§ 2640. Contributions to acquisition of property; Amount of reimbursement; Waiver.** (a) 'Contributions to the acquisition of **[the]** property,' as used in this section, include downpayments, payments for improvements, and payments that reduce the principal of a loan used to finance the purchase or improvement of the property but do not include payments of interest on the loan or payments made for maintenance, insurance, or taxation of the property.

(b) In the division of the community estate under this division, unless a party has made a written waiver of the right to reimbursement or has signed a writing that has the effect of a waiver, the party shall be reimbursed for the party's contributions to the acquisition of **[the]** property ***of the community property estate*** to the extent the party traces the contributions to a separate property source. The amount reimbursed shall be without interest or adjustment for change in monetary values and **[shall]** ***may*** not exceed the net value of the property at the time of the division."

- SB 1407 was effective as of January 1, 2005.
- SB 1407 is <u>not</u> retroactive (see *Fabian* and *Buol*) so we now have another timing element to consider.
- SB 1407 amends the language of Family Code § 2640(b) and results in an approach that is more protective of the separatizer than the Kennard approach.
- SB 1407 may not be as protective as the *Baxter* approach.

b. FC§2640(c) Reimbursement Rights.

(1) <u>Separate property rights of reimbursement in the other spouse's separate property real estate</u> – where one party contributes to the acquisition, improvement or principal reduction of the other party's separate property.

"**§ 2640. Contributions to acquisition of property; Amount of reimbursement; Waiver.**

…

(c) A party shall be reimbursed for the party's separate property contributions to the acquisition of property of the other spouse's separate property estate during the marriage, unless there has been a transmutation in writing pursuant to Chapter 5 (commencing with Section 850) of Part 2 of Division 4, or a written waiver of the right to reimbursement. The amount reimbursed shall be without interest or adjustment for change in monetary values and may not exceed the net value of the property at the time of division."

(a) Reimbursement does not appear to be limited to a disso action only. The right would survive death.

(i) No such limiting language as in 2640(b) or FC 2581. In 2640(b) the reimbursement is only provided for "in the division of the community estate under this division…"

(b) The right of reimbursement does not exist if the transfer was a valid transmutation per Family Code § 852(a).

Note: There is no such language in Family Code §2640(b).

(c) The reimbursement may not exceed the net value of the property "…at time of division."

(i) Again, "net value" refers to fair market value less any liens.

(ii) The term "at time of division" likely refers to at whatever time separate property can be confirmed to either party – but no language limiting it to a proceeding under the Family Code.

(d) There is a practical distinction between 2640(c) and 2640(b).

2640(c) by definition deals with one spouse's separate property being invested in the other spouse's separate property rather than community property as is the case under 2640(b).

(i) The owner of a separate property may not have a fiduciary duty to the other spouse to preserve the other spouse's separate property right of reimbursement.

(ii) The distinction: husband, the owner of a separate property may not have a fiduciary duty to the wife to preserve the equity in husband's separate property equity in order to protect wife's separate property right of reimbursement. By contrast, a husband dealing with the community property has a fiduciary duty to the other spouse not to waste the community asset. An unintended beneficiary of this duty is the separatizer claiming a 2640(b) right of reimbursement. Question: Is there a fiduciary duty between spouses as to the handling of a separate property asset in order to protect the other spouse's 2640(c) separate property right of reimbursement?

- See dicta in *In Re: Marriage of Walker* (2006) 138 Cal.App.4th 1408, 1419 to the effect that a spouse does have a fiduciary duty to the other spouse as to separate property.

- Query: Would such a duty apply to a right of reimbursement that is only a "burden" and not a property right?

- The result: without any form of fiduciary obligation to preserve a 2640(c) reimbursement right, the owner of the separate property could borrow out all of the equity to pay off that spouse's separate property unsecured debts (or for that

matter, to spend it on a girlfriend) and reduce the equity in the property which would defeat or diminish the other spouse's 2640(c) right of reimbursement.

(e) Do *Walrath*/SB 1407 principles apply to a 2640(c) separate-to-separate reimbursement right?

(i) There is no reason they would not.

- Actually, it would be more equitable to apply the Kennard type approach because the separate property contributor has no control over the separate property asset of the other spouse.

- An argument could be made that the Baxter approach would be most appropriate, i.e. reimbursement should be granted so long as there is any separate property estate.

c. *Moore/Marsden* Issues.

(1) Community property rights in separate property real estate – the *Moore-Marsden* issue

(a) *Moore-Marsden* issues when the property declines in value

(i) The nature of *Moore-Marsden* rights – back to basics

- In a typical case, community property used to pay down principal on a separate property asset or used to improve separate property creates, in favor of the community, rights of reimbursement and a right to share in appreciation. Think of this as a two-step process:

Step I: Reimbursement – the community is reimbursed to the extent community

property is used to pay down loan principal (or improve separate property).

Step II: The pro tanto interest – the community property is entitled to some share of the increase in the value of the separate property, proportionate to the community property contribution.

- Why – what is the basis or rationale for these two different steps in the *Moore-Marsden* approach?

  - Reimbursement – one spouse may not retain community property for his or her own separate property purposes. It is a breach of the fiduciary duty and the community is entitled to reimbursement. Hence the Step I reimbursement right.

  - Pro tanto interest – as a fiduciary, each spouse is a constructive trustee. As a constructive trustee, a spouse holds for the benefit of the community any profit he or she makes by using community property funds. Under the *Moore-Marsden* approach, when community property is "invested" in separate property, and then the separate property increases in value, some portion of the increase in value (profit) relates to the investment of community property. The separatizer holds that portion of the increase in value (the pro tanto interest) for the benefit of the community. Hence the Step II pro tanto interest.

    We know what the rule is when the separate property increases in value.

The community receives a pro tanto interest in the appreciation.

(ii) Declining value and its effect on *Moore-Marsden* rights

- In a declining real estate market, the question becomes how are the community's *Moore-Marsden* rights affected by a decrease in the value of the property.
  - Traditional *Moore-Marsden* approach
    - Step I – dollar for dollar reimbursement to the community for loan principal payments
    - Step II – A pro tanto allocation of the appreciation in the property during marriage
  - There are three possible *Moore-Marsden* type solutions when the property declines in value:
    - Solution "A" – full Step I reimbursement to the community (the community takes no share of any loss).
    - Solution "B" – Step I reimbursement is reduced by a proportionate share of the loss in appreciation
    - Solution "C" – Step I reimbursement is limited to the equity in the property at the date of trial

Note: There are other possible equitable solutions that do not follow the traditional *Moore-Marsden* approach.

- Solution "D" – divide the equity ignoring the loan balance

- Solution "E" – divide the equity considering the loan balance.

(iii) Examining the possible *Moore-Marsden* solutions – using CP principal pay down

- Solution "A" – this approach provides the community with full dollar-for-dollar reimbursement for all community funds used.

  - In this approach, the Step II analysis is not applicable because there was no "appreciation" during the marriage. This approach treats the community like a "preferred investor" – able to share in the profits but shielded from any losses.

- Solution "B" – in this approach, the Step I dollar-for-dollar reimbursement would be computed, but it would be reduced by some pro rata portion of the decline in value of the property during marriage.

  - This approach treats the community as an "at risk investor" able to share in the increases, but also subject to possible loss.

- Solution "C" – Step I reimbursement limited to the date of trial equity in the

property. This would apply in a situation where the community had paid more down on the loan than the date of trial equity in the property. It treats the community as a "non-recourse lender" to the separatizer.

(iv) Examining the non *Moore-Marsden* approaches

- Solution "D" – divide the remaining equity in the ratio of the amount of cash contributions by the community versus the cash contributions by the separatizer, without crediting the separatizer for having taken out the loan. This follows the "cash is king" approach.

- Solution "E" – divide the existing equity at the date of trial, crediting the separatizer for the separate property loan balance.

  - This approach credits the separatizer for having taken the loan out to purchase the property.

(v) What is the right solution when the property declines in value?

- Accepting the *Moore-Marsden* basis for the Step I and Step II *Moore-Marsden* rights, it would seem that solution "A" most closely follows the *Moore-Marsden* theories and is the correct solution.

  - Step I reimbursement – as a fiduciary to the community, the separatizer may not retain community property assets for his sole benefit. Under this theory, full reimbursement should be awarded to the community, even though the property declined in value and there may not be enough equity in the property to reimburse the

community. Otherwise the separatizer would benefit by the community property principal reduction on the loan.

- Step II – pro tanto interest. As a constructive trustee, the separatizer always bears the risk. If a trustee profits by the use of trust funds, he must disgorge those profits to the extent they are attributable to the trust funds (hence a pro tanto interest). However, if the trustee puts trust funds to his own purposes and loses them, he must still reimburse the trust. In the *Moore-Marsden* situation, community funds have been used to reduce the principal balance on a separate property asset. The separatizer should reimburse the community. The fact that the separatizer still lost money on his separate property investment does not and should not diminish the community's right of reimbursement.

- In *Bono v. Clark*, the court examined community funds used to make "improvements" on a mobile home/trailer that was husband's separate property. The Court of Appeal remanded the case to the trial court to determine whether the expenditures increased the value of the trailer. The court held that if the expenditures did not enhance the property's value, the community would still be entitled to reimbursement for the funds that were spent on "improving" the property. In other words, increase, decrease or no

change, the community is entitled to reimbursement for the funds used on the separate property.

(vi) Dealing with refinance proceeds – how to treat the *Moore-Marsden* interest

- If husband owns Blackacre as HSP and a *Moore-Marsden* interest is created by reason of CP principal reduction payments, how do we characterize proceeds from the refinance of Blackacre that are used to buy Whiteacre as community property?
  - Do we apply *Walrath* proportionate allocation principles to the *Moore-Marsden* interest, i.e. "*Moorath*"
  - Do we apply tracing principles and first draw out the community property *Moore-Marsden* interest from Blackacre because Whiteacre is being acquired as a community property asset following the *Beam v. Bank of America* approach or the "*Moorebeam*" approach.
  - The two approaches will create substantially different interests post-refi in both Blackacre and Whiteacre (see "*Moorebeam*" and "*Moorath*")

SEE TABLE #1 ATTACHED

SEE TABLE #2 ATTACHED

- But what about *Grinius*?
  - Under *Grinius*, since Blackacre has a CP Moore-Marsden interest, any loan secured by Blackacre will be a CP loan because the lender, having

relied on Blackacre for security, has relied on CP in making the loan

- Under *Grinius* all of the loan proceeds used to purchase Whiteacre are CP – so there is no HSP in Whiteacre

- Under *Grinius* the community is obligated to pay off the loan that is secured by Blackacre

  - The separatizer has no 2640(b) in Whiteacre, but s/he is entitled to have the loan repaid by the community

    a. In a declining market this may be better than a 2640(b) reimbursement

  - What is left in Blackacre after the loan?

    a. If the loan "takes out equity," then the CP *Moore-Marsden* is removed and the community no longer has any interest in Blackacre

    b. If the loan only uses Blackacre as "security," then the community continues to have a *Moore-Marsden* interest in Blackacre

SEE TABLE #3 ATTACHED

5. <u>Property Division and Disposition Issues at Trial</u>.

(a) Should a Party Requesting that He or She be Awarded an Upside Down Property in the Division of Community Property Receive a Credit for the Property's Negative Equity, or Only Receive the Property at a Zero Value.

(1) Where the entire estate is negative. The court has broader discretion pursuant to FC§2622(b). That section provides:

"(b) To the extent the community debts exceed total community and quasi-community assets, the excess of debt shall be assigned as the court deems just and equitable, taking into account factors such as the parties' relative ability to pay."

In this circumstance, the court clearly can award the Upside Down property to one party at a zero value.

(2) Where the property is Upside Down but the overall community estate has a positive value, the court is required to make a mathematically equal division of the parties' community property assets and liabilities pursuant to the mandates of FC§2550, which provides in pertinent part:

"Except upon the written agreement of the parties…the court shall…divide the community estate of the parties equally."

As provided in FC§2552, the court is generally required to value **the assets and liabilities** of the community estate as near as practical at the time of trial. FC§2552(a) provides in pertinent part:

"(a) For the purpose of the division of the community estate upon dissolution of marriage…the court shall value the assets and liabilities as near as practicable to the time of trial."

In dealing with an Upside Down property, the question is how is the court to "value" the asset and the liability?

(a) The asset – the fair market value of the real property is handled in the traditional fashion. Evidence of what the property could be sold for between a willing seller and a willing buyer, i.e. fair market value, would be used.

(b) The liability – the determination of the community property "value" of the liability may turn on the type of loan that is involved. As discussed above, there are three types of loans that are common, only two of which apply to real estate. They are:

(i) Recourse debt.

- Not applicable to loans secured by real estate.

(ii) Non-recourse debt.

(iii) "Rarely-recourse" debt.

(3) The community "value" of the debt or liability may differ based on the type of loan.

(a) Recourse debt – here the other community property assets would be available to satisfy any excess debt remaining after the application of the value of the security (the property).

(i) By way of example, if a car has a value of $15,000 but has a $20,000 recourse debt, then the creditor may first apply the value of the security to the debt and seek to collect the balance of the debt (presumably $5,000) from other community assets, separate property assets, or future earnings of the parties. As a result, it would appear that the "value" of this debt is in fact $20,000 as that is the amount that may have to be applied to the satisfaction of that debt.

(b) Non-recourse debt – the community property "value" of non-recourse debt is more complex. Here, by law, the lender may not seek to recover any debt beyond the value of the security (the lender has "no recourse" except to the security). Since no other community property assets (or for that matter any separate property assets) can be reached by the creditor in a non-recourse loan, it should be argued that the community "value" of the liability is no more than the fair market value of the

property.

(i) In *In Re: Marriage of Fonstein* (1976) 17 Cal.3d 738, the Supreme Court, in discussing the types of obligations the court must consider in the division of the community estate stated:

"The obligations to be allocated are those that could be enforced against one or more assets included in the division, either because the obligation is secured by an encumbrance on the asset or because the asset could be reached on execution if the obligation were reduced to a judgment." (Id at p. 748).

Under this analysis, the asset should be awarded to a spouse at a zero value and no credit should be given for the negative equity.

(c) "Rarely-recourse" debt – as discussed above, it is extremely rare that a lender would seek remedies under judicial foreclosure in order to obtain a deficiency judgment. First of all, the procedure is quite expensive and secondly, the debtor is provided a redemption period if a deficiency judgment is obtained.

This raises the issue of whether or not any liability in excess of the fair market value of the property is merely "speculative." Generally, expenses and consequences that are speculative are not to be taken into account in valuing the community property for purposes of division (see *In Re: Marriage of Fonstein* (1976) 17 Cal.App.3d 738 regarding speculative tax consequences, and see *In Re: Marriage of Stratton* (1975) 46 Cal.App.3d 173, 176 which states it is inappropriate to consider speculative costs of sale of real property in determining value.

(i) The "Kelley issue" – *In Re Marriage of Kelley* (1976) 64 Cal.App.3d 82.

- Recognize a loan that is enforceable.
- Any concern about subsequent forgiveness

or cancellation is not applicable to the community's liability.

- Reservation of jurisdiction is not appropriate.

The same rationale should apply to "rarely-recourse" loans. This would support giving credit for the negative equity.

(4) When analyzing the community "value" of a mortgage that exceeds the fair market value of the property one should consider an analogy to corporate stock.

(a) If the parties owned a minority interest in a corporation over which they exerted no management or control, and where the fair market value of the corporate assets were exceeded by the totality of the corporate debts, how would that stock be listed on the community property balance sheet?

(i) Since generally the corporate creditors could not reach the shareholder's personal assets to satisfy corporate debts, the community would never be in a position of being liable for the amount of debt in excess of the corporate assets. As such, the value of the stock would be zero and no "negative equity" would be recognized on the community property balance sheet. The same result should follow with a non-recourse mortgage.

(b) Other Debt Solutions – Approaches that May Avoid Credit for the Negative Equity in Cases with "Rarely-Recourse" Loans.

(1) As mentioned above, where the property is secured by a recourse loan that exceeds the fair market value of the property, that property may properly be reflected on the community property balance sheet as a net negative asset. There are possible approaches to avoid this result.

(a) Proposed loan modifications.

(i) Under certain circumstances loan modification is an available remedy for the Upside Down property. In this situation you should refer your client to an expert in this field.

(ii) Prior to trial, propose, and request consent to a loan modification.

- As the parties have fiduciary obligations to one another in the management and control of community property, a spouse will be hard pressed to refuse to cooperate in a loan modification that would result in increasing the community estate by reducing the loan balance.

- If the other spouse refuses to cooperate with the loan modification, seek an order dispensing with the requirement of that spouse's consent under FC§1101(e), which provides:

"In any transaction affecting the 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, mental incapacity or prolonged absence of the non-consenting spouse."

(b) Short sale.

(i) A short sale is where the lender agrees to a sale to a third party for an amount less than

the current outstanding balance of the liens and encumbrances and agrees to accept that amount in full satisfaction of the underlying obligation. Short sales can be difficult to negotiate and the client should be referred to a real estate broker who specializes in and/or has extensive experience with short sales.

- Again, the spouse objecting to the property being awarded at a negative value should propose a short sale pre-trial. The court's authority for ordering such a sale is found in FC§2108 (conveniently hidden in the disclosure statutes) which provides in pertinent part as follows:

"At any time during the proceeding, the court has the authority, on the application of a party and for good cause, to order the liquidation of community or quasi-community assets so as to avoid unreasonable market or investment risks given the relative nature, scope and extent of the community estate."

- This section, together with section 1101(e) cited above, provides ample authority for the court to order a short sale on the showing that it would be in the best interest of the community estate. Avoiding excess liability on a recourse loan or, for that matter, rarely-recourse loan should be sufficient good cause.

(c) Deed in lieu of foreclosure.

(i) A deed in lieu of foreclosure is when the lender accepts a deed from the owner of the property rather than exercising its right to foreclose. Generally, the lender accepts the deed as complete satisfaction of the obligations due under the loan. Note: generally, lenders will not accept a deed in lieu of foreclosure until an attempt to sell the property has been unsuccessful.

(ii) Arguably, a deed in lieu of foreclosure is a liquidation under FC§2108. It is certainly a "transaction" under FC§1101(e). Arguably, such a "transaction" is within the court's authority under FC§2108 and 1101(e) discussed above.

Note: All of these "solutions" will likely adversely impact the credit of the parties. "The mystery of Fico scores."

c. Potential Tax Liability for Cancellation of Debt.

(1) "Cancellation of debt" is the commonly used term. The Internal Revenue Code refers to it as "relief from debt." (for example, see IRS form 982).

(2) Transactions which reduce or forgive a debt owing by a tax payer may result in tax liability for cancellation of debt (COD tax liability). This is true in all of the following circumstances:

(a) Loan modification which reduces loan principal or forgives accrued interest.

(b) A short sale.

(c) A deed in lieu of foreclosure.

(d) A foreclosure without a deficiency judgment.

(3) If a lender cancels or reduces debt, the lender is required to issue a 1099C to the borrower.

(a) One problem here is the lender will include the "fair value" in the 1099C and it may be a figure creating the appearance of a larger forgiveness of debt.

(4) A distinction between rarely-recourse and non-recourse loans.

(a) A taxpayer <u>does</u> incur COD tax liability when relief is from <u>recourse</u> debt.

(b) The taxpayer does <u>not</u> incur COD tax liability when relief from <u>non</u>-recourse debt <u>unless</u> the relief is due to:

(i) A short sale, or

(ii) Loan modification of principal balance.

(5) Due to recent federal legislation, a tax payer will not incur COD tax liability when relief is from any debt regarding a principal residence.

(a) It is important that the tax payer report the sale (transaction).

(b) It is also important to note if both spouses vacate the property and rent it to a third party, they will lose their right to this cancellation of debt tax liability relief as the property will lose its status as their principal residence.

(6) For additional information on cancellation of debt tax liability, see the following publications:

(a) IRS publication 4681: Canceled Debts, Foreclosures, Repossessions and Abandonments.

(b) IRS publication 544: Sales and Other Disposition of Assets.

d. Disposition of Distressed Real Estate at Trial.

(1) The court's authority/discretion.

(a) *In Re: Marriage of Cream* (1993) 13 Cal.App.4th 81 – an overview.

(i) Trial courts lack authority to order interspousal auctions of property over the objection of a party, holding that the determination of value in the division of community property is a non-delegable judicial function.

(ii) The court has broad authority to order an asset sold to third parties and divide the proceeds as required to make an ultimate equal division of property.

(iii) An asset should not be sold (such as a family business) where each party wants to retain it and is capable of running it and purchasing the other party's interest.

(iv) The court noted a variety of other alternatives that would be available to the parties by stipulation, but noted in the absence of such stipulation the court must value assets that are being awarded to the parties in order to effectuate an equal division of community property.

"No matter how difficult the decision the trial judge must bite the bullet, value the business and award it to one of the parties. No one ever said judging was easy" (Id at p. 91).

(2) Alternatives available to the court.

(a) In dividing the parties' community property the court generally has the following alternatives available:

(i) Divide the asset equally between the parties. This is generally not a good fit for real estate.

(ii) Award the asset to one party with offsetting assets or an equalizing payment to the other party.

(iii) Order the property "sold" – in other words, disposed of in some manner.

(b) In considering these alternatives, the following issues should be considered:

(i) Ordering the property equally divided between the parties.

- It would seem highly unlikely the court would order real estate equally divided between the parties (i.e. each party

awarded an undivided one-half interest as tenants in common) where the property is either Upside Down or Doomed. This would not result in any sort of relief for the parties.

- On the other hand, if the parties wish to continue to co-own the property by agreement in hopes the real estate market improves or a loan modification could be obtained, they could agree to that result.

(ii) Award the property to one party with offsetting assets or an equalizing payment to the other.

- This raises the issue of at what value the asset should be "booked" on the community property balance sheet, discussed above.

- Generally, the parties remain jointly liable on the mortgage even though the asset is awarded to one party and that party is assigned that debt and ordered to pay, defend and hold the other party harmless.

Question: Does this really constitute an equal division of community property debt? One aspect of a "debt" is the potential liability for the debt, especially with the recourse loan and potentially with the "rarely-recourse" loan. Even though the debt is assigned to one party, the other party still retains some potential liability for that loan and the "value" of that potential liability is not being taken into account in determining an equal division of the community property. The spouse that is not retaining the house will continue to have that liability, it will continue to impact his or her credit and continue to impact his or her ability to obtain a loan for a new home or other purposes. Perhaps the party advocating

the property should be sold rather than awarded to the other spouse, should argue that leaving that spouse with this potential obligation or liability (that has not been valued) violates the equal division mandate of FC§2550.

(iii) Order the property "sold" or otherwise disposed of.

- There is no question the court has the authority to order an asset sold or liquidated. Here, the court may order the property listed for sale, order the parties to cooperate in attempts to obtain a "short sale." There is no reason why the court would not be authorized to order the property transferred back to the lender under a deed in lieu of foreclosure.

- If the court makes any of these orders, counsel should specifically request that the court reserve jurisdiction to divide any actual cancellation of debt tax liability that might arise from the disposition of the asset.

(iv) Deferred sale.

- It would seem that the court's authority to order a deferred sale of real property is limited to those situations where such an order is made for the benefit of minor children under FC§3800 et seq. Such an order requires a determination of economic feasibility under FC§3801. FC§3801(c) provides in pertinent part as follows:

"It is the intent of the Legislature, by requiring the determination under this section, to do all of the following:

(1) Avoid the likelihood of possible defaults on the payments of notes and resulting foreclosures."

- FC§3802 requires the court to consider:

"The economic detriment to the non-resident parent in the event of a deferred sale of a home order."

These issues underscore why a deferred sale of a Doomed or Upside Down property under FC§3800 et seq. would not likely be appropriate.

6. Conclusion.

The foregoing material should provide a useful roadmap to the real property issues created by this troubled real estate market in the context of a family law proceeding.

"MOOREBEAM" AND "MOORATH" APPROACHES TO PURCHASE OF WHITEACRE WITH CASH OUT REFI PROCEEDS FROM BLACKACRE
(Both *Moore/Marsden* Step I and Step II at Date of Refi)

BLACKACRE (M/M)	**→ $300k →**	**WHITEACRE (CP)**
ON DATE OF MARRIAGE:		
HSP Blackacre: **A** FMV $600k Loan ($150k) Equity $450k		
BEFORE REFI:		
FMV increases to $800k **B** CP pays off $150k loan Reimbursement $150k $150k/$600k X $200 = + $50k CP M/M $200k		
ON DATE OF REFI:		
FMV $800k **C** Loan ($0) Equity $800k CP M/M $200k = 25% HSP $600k = 75%	$300k cash out refi proceeds borrowed against Blackacre and used to purchase Whiteacre →	
AFTER REFI:		**AFTER REFI:**
Moorebeam / Moorath **D** $800k FMV $800k ($300k) Loan ($300k) $500k Equity $500k $0 CP M/M $125k = 25% $500k HSP $375k = 75%		Moorebeam / Moorath **E** $900k FMV $900k $600k Loan ($600k) $300k From BA $300k $200k CP $75k = 25% $100k HSP $225k = 75%
IF $100K INFLATION:		**IF $200K INFLATION:**
Moorebeam / Moorath **F** $900k FMV $900k ($300k) Loan ($300k) $600k Equity $600k $0 CP $175k $600k HSP $425k		Moorebeam / Moorath **G** $1,100k FMV $1,100k ($600k) Loan ($600k) $500k Equity $500k $400k CP $275k $100k HSP $225k
IF $350K DEFLATION:		**IF $150K DEFLATION:**
Moorebeam / Moorath **H** $450k FMV $450k ($300k) Loan ($300k) $150k Equity $150k $0k CP $75k $150k HSP $75k		Moorebeam / Moorath **I** $750k FMV $750k ($600k) Loan ($600k) $150k Equity $150k $50k CP $0 $100k H2640 $150k

TABLE #1

"MOOREBEAM" AND "MOORATH" APPROACHES TO PURCHASE OF WHITEACRE WITH CASH OUT REFI PROCEEDS FROM BLACKACRE (*Moore/Marsden* Step I Only at Date of Refi)

BLACKACRE (M/M)	**→ $300k →**	**WHITEACRE (CP)**
ON DATE OF MARRIAGE:		
HSP Blackacre: **A** FMV $600k Loan ($150k) Equity $450k		
BEFORE REFI:		
FMV increases to $800k **B** CP pays off $150k loan Reimbursement $150k Step I Only CP M/M Reimbursement $150k		
ON DATE OF REFI:		
FMV $800k **C** Loan ($0) Equity $800k CP M/M $150k = 19% HSP $600k = 81%	$300k cash out refi proceeds borrowed against Blackacre and used to purchase Whiteacre →	
AFTER REFI:		**AFTER REFI:**
Moorebeam / Moorath **D** $800k FMV $800k ($300k) Loan ($300k) $500k Equity $500k $0 CP M/M $94k = 19% $500k HSP $406k = 81%		Moorebeam / Moorath **E** $900k FMV $900k $600k Loan ($600k) $300k From BA $300k $150k CP $57k = 19% $150k HSP $243k = 81%
IF $100K INFLATION:		**IF $200K INFLATION:**
Moorebeam / Moorath **F** $900k FMV $900k ($300k) Loan ($300k) $600k Equity $600k $0 CP $140k[1] $600k HSP $460k		Moorebeam / Moorath **G** $1,100k FMV $1,100k ($600k) Loan ($600k) $500k Equity $500k $350k CP $257k $150k HSP $243k
IF $350K DEFLATION:		**IF $150K DEFLATION:**
Moorebeam / Moorath **H** $450k FMV $450k ($300k) Loan ($300k) $150k Equity $94k[2] $0k CP $56k $150k HSP $56k		Moorebeam / Moorath **I** $750k FMV $750k ($600k) Loan ($600k) $150k Equity $150k $ 0k CP $ 0k $150k H2640 $150k

TABLE #2

[1] Rough calculation of $94k CP pay down vs. $600k purchase price with a $300k increase in value during marriage.
[2] Step I reimbursement only.

"MOOREGRIN" APPROACH TO PURCHASE OF WHITEACRE WITH CASH OUT REFI PROCEEDS FROM BLACKACRE
(Both *Moore/Marsden* Step I and Step II at Date of Refi)

BLACKACRE (M/M)	**→ $300k →**	**WHITEACRE (CP)**
ON DATE OF MARRIAGE:		
HSP Blackacre: **A** FMV $600k Loan ($150k) Equity $450k		
BEFORE REFI:		
FMV increases to $800k **B** CP pays off $150k loan Reimbursement $150k $150k/$600k X $200 = + $50k CP M/M $200k		
ON DATE OF REFI:		
FMV $800k **C** Loan ($0) Equity $800k CP M/M $200k = 25% HSP $600k = 75%	**Under *Grinius*, all $300k loan proceeds are CP** →	
AFTER REFI:		**AFTER REFI:**
Mooregrin **D** $800k FMV ($300k) Loan $500k Equity $0 CP M/M $500k HSP	**Community owes the $300k debt** ←	Mooregrin **E** $900k FMV ($600k) Loan $300k From BA $300k CP $ 0 H2640
IF $100K INFLATION:		**IF $200K INFLATION:**
Mooregrin **F** $900k FMV ($300k) Loan $600k Equity $0 CP $600k HSP	**Community owes the $300k debt** ←	Mooregrin **G** $1,100k FMV ($600k) Loan $500k Equity $500k CP $ 0 HSP
IF $350K DEFLATION:		**IF $150K DEFLATION:**
Mooregrin **H** $450k FMV ($300k) Loan $150k Equity $0k CP $150k HSP	**Community owes the $300k debt** ←	Mooregrin **I** $750k FMV ($600k) Loan $150k Equity $150k CP $ 0 H2640

TABLE #3

Robert E. Blevans, Esq.

Blevans & Blevans, LLP
Napa, California

Mr. Blevans' practice emphasizes traditional client representation and litigation. Mr. Blevans is a partner in the family law firm of Blevans & Blevans, LLP, located in Napa, California. While Mr. Blevans practices primarily in Napa, California, he does accept complex matters pending in Marin and Sonoma Counties. Mr. Blevans has extensive experience and expertise in handling complex asset cases, particularly those involving issues of valuation and disposition of partnerships, professional practices, closely held corporations and real estate investments. He has litigated and resolved by settlement numerous cases involving apportionment of separate and community property interests in real estate and business interests. Mr. Blevans also counsels clients in the preparation of Premarital and Marital Agreements, and helps them avoid creating unintended community property interests in separate property.

Mr. Blevans practiced law for 18 years in Los Angeles, California where he was a named partner in the firm of Blevans & Greenberg. While in Los Angeles Mr. Blevans served as Judge Pro Tem, mediator for the Family Law Department of the Los Angeles Superior Court, and was a member of the Executive Committee of the Beverly Hills Bar Association, Family Law Section.

Mr. Blevans has served as chair of the Family Law Section of the Napa County Bar Association from 1998 through 2002. Mr. Blevans is a fellow in the American Academy of Matrimonial Lawyers and served as President of the Northern California Chapter in 2005. Mr. Blevans has repeatedly been selected as one of the "Top 100 Northern California Super Lawyers" and has lectured extensively on family law topics.

Mr. Blevans received his Juris Doctorate in 1977 and was admitted to practice in California that year. He was first certified as a Family Law Specialist in 1983 by the California State Bar Board of Legal Specialization. Mr. Blevans has held the Martindale Hubble AV rating since the early 1980's.

Curriculum Vitae

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Professional Affiliations

- American Academy of Matrimonial Lawyers, Northern California Chapter
  - Chapter President-Elect in 2010
  - Board of Managers member from 2007 through present
  - Symposium Chairperson in 2007
- Association of Certified Family Law Specialists
  - President in 2006
  - 30th Anniversary Party Co-Chairperson in 2010
  - Board of Directors member from 2003 through 2007
  - Spring Seminar Chairperson in 2005
- Fellow, International Academy of Matrimonial Lawyers
- Monterey County Bar Association
  - President in 1992
  - Executive Committee member from 1988 through 1993
- Monterey College of Law
  - Dean of Community Programs from 2005 through present
- Certified Family Law Specialist, Certified by State Bar of California, from 1987 through present
- Licensed California Real Estate Broker from 1986 through present
- Licensed California Notary Public from 1986 through present

Teaching Positions

- Monterey College of Law Professor (six-time recipient of "Professor of the Year" Award)
  - Legal Research and Writing, from 1978 through present
  - Civil Litigation, from 1984 through present
  - Introduction to Law, from 2004 through present
- AAML Trial Practicum instructor in 2006 and 2008
- Monterey County Bar Association Annual Family Law Update class, from 1987 through present

Book

- *California Legal Research* (1977), currently in its fifth edition

Articles and Professional Presentations

- Various

Education

- B.A. (University of Michigan, 1970)
- J.D. (Monterey College of Law, 1978)