



by WILLIAM S. RYDEN

TRANSMUTATION OF LAW

Under *Marriage of Valli*, third-party transactions are not exempt from transmutation rules

WHEN the California Supreme Court issues an opinion that addresses a community property issue, family law practitioners take note.¹ In the recent *In re Marriage of Valli* decision,² the court held that a \$3.75 million whole life insurance policy that singer Frankie Valli purchased from a third-party insurance company, naming his wife as sole owner and sole beneficiary, should be characterized as a community property asset. The *Valli* decision also involves the issues of transmutation and the application of Evidence Code Section 662. Although straightforward in its holding, *Valli* is a departure from prior transmutation cases and has possible consequences that could affect estate planning and creditor rights.

In *Valli*, the key distinction from prior cases holding that insurance policies purchased with community funds are community property was the fact that Valli had named his spouse both as legal owner of the policy and

the sole beneficiary of the cash proceeds upon his death. It was clear from the terms of the policy that Valli had divested himself of ownership and control, apparently for estate planning purposes. The court of appeal had unanimously determined that because ownership stood in Mrs. Valli's name with Mr. Valli's knowledge and consent, the policy was presumed to be her separate property. The supreme court, in reaching its result, expanded the law of transmutation to include not only transactions between spouses but also between a spouse and a third party.

Valli also limits what role Evidence Code Section 662 may have on characterization of property in a dissolution. The supreme court considered whether the policy should be characterized as community property or separate property under Section 662, which states: "The owner of the legal title to property is presumed to be the owner of the full beneficial title. This presumption may be re-

butted only by clear and convincing proof." In *Valli*, the supreme court held that "We need not...decide here whether Evidence Code section 662's form of title presumption...applies....Assuming for the sake of argument that [it] may sometimes apply, it does not apply when it conflicts with the transmutation statutes."³

The basic facts in *Valli* were not in dispute. During the marriage, Mr. Valli acquired the policy on his life and named his wife as its sole owner and sole beneficiary. The trial record indicated that Mrs. Valli did not participate in the transaction. She did not suggest that she be the owner nor the amount of insurance that should be acquired. Mr. Valli had the assistance of professionals (his business man-

William S. Ryden is a certified family law specialist and a partner with Jaffe and Clemens in Beverly Hills. He was lead counsel for Mrs. Valli at trial and through the appeal.

ager and life insurance agent) in making his decision to acquire and title the policy. He paid the life insurance premiums with community property funds. There is no question that he relinquished all indicia of legal ownership, beneficial ownership, and management and control of the policy.

Clearly, Valli did not have any expectation of sharing in the economic benefits, since the death benefit would be payable upon his death. This is not an uncommon occurrence. For estate planning purposes, couples often take out life insurance policies and place title or ownership in one spouse's name to keep the proceeds out of the insured's estate in order to avoid or reduce estate taxes. In certain instances couples do not consult with attorneys before acquiring policies, nor are they likely to discuss the possible legal and economic consequences that will flow from their choices if there is a later divorce.

Prior to *Valli*, no family law case had extended the Family Code's transmutation statutes to apply to transactions between a spouse and a third party. No family law case prior to *Valli* eliminated application of Evidence Code Section 662 to characterization issues.⁴ The facts of *Valli* provided the court with an opportunity to carve out an exception for situations in which the conduct of a party or the writings signed by a party demonstrate that the party intended to relinquish all ownership interest in an asset, or alternatively, to carve out an exception applicable to life insurance policies.

Considering prior applicable decisions, the court interpreted Family Code Sections 850 to 852, which concern transmutions, to apply to transactions involving third parties if one spouse claims as separate property an asset acquired during marriage and paid for with community funds that is titled in that spouse's name. The fact that Valli did not expressly state in writing that he intended to give up a community interest or change the character of an asset meant that the requirements of Family Code Section 852 had not been met, making the life insurance policy community property. In order to appreciate the context of this new rule, one must understand why transmutation rules were created.

In 1984, the legislature enacted what are now Family Code Sections 850, 851, and 852.⁵ Those statutes provide the requirements for how one spouse could change the character of an asset from community property to separate property, or separate property to community property, or the separate property of one spouse to separate property of the other. This change of character is a transmutation, and for it to be valid, it must be 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.⁶ The purpose of the transmutation legislation was to eliminate the ability of spouses to claim that the character of property changed based on an alleged oral agreement or a party's conduct.

Transmutation in *MacDonald*

*Estate of MacDonald*⁷ was the first significant case to address the transmutation issue. In this case, the court exposed a defective attempt to create a transmutation. *MacDonald* was an action by the children of a decedent wife to establish her community property interest in the value of the husband's IRA accounts. The evidence relating to the alleged transmutation was uncontroverted. Prior to her death from cancer, the wife and her husband intended and attempted to divide the community estate so that her children by a prior marriage would receive her share of the community property and his children from a former marriage would receive his share. The trial court found that in signing a consent to certain agreements in connection with the husband's IRA accounts, the wife intended to transmute her community property interest in those funds to the husband's separate property.

The California Supreme Court reversed the appellate court on grounds that the documents purportedly transmuting the IRA interest did not meet the writing requirements of Civil Code Section 5110.730 (which is now Family Code Section 852). The court expressly disregarded the intent of the parties, interpreting what is now Family Code Section 852 as an absolute bar to enforcement of a technically insufficient writing. The court found: "We must therefore determine whether Margery's actions, whether or not they were intended to transfer her interest in the pension funds, were effective under Section 5110.730(a) to transmute those funds from community property to Robert's separate property. We are of the opinion that they were not."⁸ The court also noted: "There is no question that the Legislature intended by enacting Section 5110.730(a) to invalidate all solely oral transmutions."⁹ "In our view," the court continued, "[T]he Legislature cannot have intended that *any* signed writing whatsoever by the adversely affected spouse would suffice to meet the requirements of Section 5110.730(a). First, to so construe that statute would render mere surplusage all the language following the words 'unless made in writing,' including the phrase 'an express declaration.' A construction rendering some word surplusage is to be avoided."¹⁰

In *MacDonald*, the disputed writing was the written consent given by the wife to her husband's designation of beneficiaries other than her to his IRA accounts. The court explained that consenting to the designation of other beneficiaries was insufficient to con-

stitute a transmutation because the consent paragraphs did not expressly state that the consent constituted a transfer of her community interest in the funds to her husband. *MacDonald* fashioned two requirements. A sufficient writing under Section 852 must contain 1) language of transfer and 2) an express statement that characterizes the title of the property after transfer. An important point to note is that the court would not allow extrinsic evidence to further interpret the actual writing. If the writing is ambiguous as to the intention to change the character of property, the writing fails, and the transmutation will be denied. Unwritten intent to create a transmutation will not be allowed to be shown through extrinsic evidence. It is also worth noting that the *MacDonald* decision favors a finding in favor of the community.¹¹

In 1995, in *In re Marriage of Haines*,¹² the court of appeal determined that transmutions can be completed by way of a quitclaim deed. Taking the analysis a step further, the court determined that interspousal transactions must comply with the rules controlling actions of persons occupying confidential relations with each other. Transmutions are subject to the fiduciary rules governing spouses and the spouse benefitting from the transaction has the burden of overcoming the presumption that an advantage was gained by the exercise of undue influence. In *Haines*, one spouse obtained a quitclaim deed from the other by telling her that he would not cosign for her automobile loan unless she signed the deed. The court held that the deed was not signed voluntarily and freely with full knowledge of the legal consequences.¹³

The next important case to address a complicated transmutation fact pattern was *In re Marriage of Barneson*.¹⁴ In that case, the husband provided written instructions to his investment managers to "transfer" his Marina Oil stock into his wife's name or to "journal" stock in his Schwab account into her account. The appellate court rejected the wife's argument that her husband had failed to rebut the statutory presumption created by Evidence Code Section 662 that she held full beneficial title to the stock placed in her name. The court ruled that the term "transfer" might or might not refer to a change of ownership. This demonstrated an ambiguity in the husband's written directions. In referring to the title provisions embodied in Section 662, however, the court did not state that the title presumption could never apply in family law situations.¹⁵

In 2005, the court decided *In re Marriage of Starkman*,¹⁶ which concerned whether an estate plan satisfied the requirements of the transmutation statutes. In that case, the husband, heir to the UPS fortune, married in

MCLE Test No. 246

The Los Angeles County Bar Association certifies that this activity has been approved for Minimum Continuing Legal Education credit by the State Bar of California in the amount of 1 hour.

1. In determining whether a transmutation will be effective, courts primarily look to the intent of the parties.

True.
False.

2. A key fact in *Marriage of Valli* that makes it different from prior cases involving insurance policies purchased with community funds is that Mr. Valli, on his own, named Mrs. Valli as owner and beneficiary.

True.
False.

3. Evidence Code Section 662 provides that the owner of legal title to property is presumed to be the owner of beneficial title.

True.
False.

4. For a transmutation to be effective, it must be 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.

True.
False.

5. In order to be sufficient to effectuate a valid transmutation, a writing need only include language of transfer.

True.
False.

6. The presumption set forth in Evidence Code Section 662 can only be rebutted by clear and convincing evidence.

True.
False.

7. While one spouse can transmute his or her separate property to community property, a spouse cannot transmute his or her separate property to the other spouse as separate property.

True.
False.

8. In order to be sufficient to effectuate a valid transmutation, a writing must include the word "transmutation."

True.
False.

9. Mr. Valli, in naming his wife as both owner and beneficiary, confirmed that he intended to relinquish his community property interest in the policy.

True.
False.

10. One purpose in enacting the transmutation statutes was to eliminate claims that the character of property (either as community property or separate property) had changed based on an alleged oral agreement between the spouses.

True.
False.

11. The transmutation rules never apply to an acquisition by one spouse from a third party.

True.
False.

12. Execution of a quitclaim deed can be sufficient to effectuate a transmutation.

True.
False.

13. Spouses engaging in interspousal transmutions are not subject to fiduciary obligations.

True.
False.

14. If an alleged transmutation writing is ambiguous, the spouse asserting that a transmutation of property has occurred may introduce parol evidence to remove the ambiguity.

True.
False.

15. Instructions to an investment manager to "transfer" or "journal" stock into a spouse's name is sufficient to cause a change in the character of the stock.

True.
False.

16. It is legally permissible for spouses to enter into conditional transmutions that only change the character of separate property to community property in the event of one spouse's death.

True.
False.

17. One way to avoid application of the transmutation statutes is to provide in estate planning documents that the transmutation agreement is automatically terminated upon the filing of a petition for dissolution of marriage.

True.
False.

18. The holding in *In re Marriage of Brooks and Robinson* is no longer applicable.

True.
False.

19. For estate planning purposes, if the intention of the parties is to keep life insurance proceeds out of the estate of the insured spouse, premium payments should be paid from a separate property source.

True.
False.

20. Community property is liable for a debt incurred by either spouse before or during marriage.

True.
False.



Name _____

Law Firm/Organization _____

Address _____

City _____

State/Zip _____

E-mail _____

Phone _____

State Bar # _____

INSTRUCTIONS FOR OBTAINING MCLE CREDITS

1. Study the MCLE article in this issue.

2. Answer the test questions opposite by marking the appropriate boxes below. Each question has only one answer. Photocopies of this answer sheet may be submitted; however, this form should not be enlarged or reduced.

3. Mail the answer sheet and the \$20 testing fee (\$25 for non-LACBA members) to:

Los Angeles Lawyer
MCLE Test
P.O. Box 55020
Los Angeles, CA 90055

Make checks payable to Los Angeles Lawyer.

4. Within six weeks, Los Angeles Lawyer will return your test with the correct answers, a rationale for the correct answers, and a certificate verifying the MCLE credit you earned through this self-assessment activity.

5. For future reference, please retain the MCLE test materials returned to you.

ANSWERS

Mark your answers to the test by checking the appropriate boxes below. Each question has only one answer.

1. True False

2. True False

3. True False

4. True False

5. True False

6. True False

7. True False

8. True False

9. True False

10. True False

11. True False

12. True False

13. True False

14. True False

15. True False

16. True False

17. True False

18. True False

19. True False

20. True False

1990. In 1996, he employed an attorney to prepare an estate plan. Contemporaneously with execution of the trust, the husband and wife executed a general assignment to convey “any asset, whether real, personal, or mixed” that they owned or would own to the trust. The general assignment did not specifically identify any property as the husband’s separate property. One month after the execution of the trust and general assignment, the attorney sent the parties copies of the estate plan instruments. The cover letter advised that the trust provided a presumption that all the trust assets were “your community property unless you clearly specify otherwise. Therefore, it is very important that separate property be clearly identified as such.”¹⁷

The husband later executed various stock brokerage transfer forms to convey specific assets into the trust. Each form designated the assets to be held by the husband and wife as trustees. The forms did not describe the assets as either community property or separate property. During dissolution, the wife contended that the assets that her husband had conveyed to the trust by the stock brokerage forms had been transmuted into community property. The trial court disagreed and ruled that he did not transmute his separate property assets by conveying them to the trust. The wife appealed.

The question presented to the appellate court was whether the trust, general assignment, and stock brokerage forms taken together established an express intent on the husband’s part to change the character of his separate property to community property. The court reasoned that a writing signed by the adversely affected spouse is not an “express declaration” for the purposes of Family Code Section 852(a) unless it contains language that expressly states that the characterization or ownership of the property is being changed.¹⁸ The court also held that an “express declaration” does not require use of the terms “transmutation,” “community property,” “separate property,” or a particular locution. Although the court held that those terms were not required, “The express declaration must unambiguously indicate a change in character or ownership of property. A party does not “slip into a transmutation by accident.”¹⁹ Moreover, the court held that “In deciding whether a transmutation has occurred, we interpret the written instruments independently, without resort to extrinsic evidence.”²⁰

The court found that neither the trust’s terms nor the conveyance to the trust effected by the general assignment was sufficient to establish unambiguously that the husband was effecting a change of ownership in the entirety of his significant separate estate. Had there been an intent to effectuate a change of

ownership, the parties might have stated that any property transferred to the trust by either of them “becomes” or “is changed into” the community property of the parties. The trust’s stated purposes could have stated (but did not) that one purpose was for the husband to transmute the entirety of his separate estate to community property. Reasonable inferences from other trust provisions regarding separate property supported the court’s conclusion. The court also found that a letter from the husband’s attorney to be inadmissible extrinsic evidence²¹ and that the estate plan instruments and stock brokerage transfer forms did not establish a transmutation of the husband’s separate property into community property.²²

In 2008, *Marriage of Holtemann* was decided, and another legal concept came into play.²³ Effective transmutation agreements cannot be conditional. Although executed for purposes of estate planning, the characterization as community property is not limited only for estate planning. Once a valid transmutation occurs, it is valid and enforceable, regardless of the purposes for which it was done. In *Holtemann*, the husband and wife married in 2003 and separated in 2006. During marriage, the parties retained an attorney to prepare estate planning documents. The attorney prepared a written transmutation agreement and trust, which the parties executed in 2005. An introductory provision in the transmutation agreement stated that “[t]he parties are entering into this agreement in order to specify the character of their property interests pursuant to the applicable provisions of the California Family Code. This agreement is not made in contemplation of a separation or marital dissolution and is made solely for the purpose of interpreting how property shall be disposed of on the deaths of the parties.” The parties also acknowledged that their attorney had explained the “legal consequences” of the agreement, and that they had decided not to retain separate counsel after being advised of the advantages of doing so.²⁴

The transmutation agreement stated that the husband agreed that the property described in “Exhibit A (including any future rents, issues, profits, and proceeds of that property) is hereby transmuted from his separate property to the community property of both parties.”²⁵ As noted in the decision, the agreement’s statement of intent provided: “This is a joint trust established by the settlors in order to hold community property of the settlors, which community property was created by the transmutation of separate property of settlor Frank G. Holtemann concurrently with the execution of this trust instrument.”²⁶

At the bifurcated trial on the validity of

transmutation agreement, the trial court found that under express terms of the agreement, the husband had transmuted his separate property to community property. The husband appealed. The question before the appellate court was whether the transmutation agreement and the trust were sufficient to establish the husband’s express intent to transmute his separate property to community property, as contemplated by Section 852, given the fact that language in both documents indicated that they were executed solely for estate planning purposes. The court observed: “In deciding whether a transmutation has occurred, we interpret the written instruments independently, without resort to extrinsic evidence.”²⁷

The court found that the transmutation was valid. The agreement unambiguously stated that “Husband agrees that the character of the property described in Exhibit A...is hereby transmuted from his separate property to the community property of both parties.” The trust similarly provided that it was created “in order to hold community property of the settlors.” That community property “was created by the transmutation of separate property of settlor Frank G. Holtemann concurrently with the execution of this trust instrument. As the trial court aptly noted, “[a] clearer statement of a transmutation is difficult to imagine.”²⁸

The *Holtemann* court distinguished this fact scenario from the one presented in *Starkman*. Unlike *Starkman*, in which the word “transmutation” was never mentioned, in *Holtemann* the word is stated repeatedly. There can be no doubt that, with the advice of counsel, the parties chose that specific term of art.²⁹ Regardless of the motivations underlying the documents, the documents contained the requisite express, unequivocal declarations of a present transmutation. Moreover, the documents reflected that the husband was fully informed of the legal consequences of his actions.³⁰

In 2009, another transmutation scenario added a new wrinkle. In *In re Marriage of Lund*,³¹ a husband and wife executed a document titled Agreement to Establish Interest in Property in 2002, two years before dissolution. The agreement was executed concurrently with other estate planning documents, including wills, which stated that all of the documents were integrated. The attorney who drafted the agreement represented both parties. The recitals stated that at the date of marriage, the husband owned property of substantial value, the wife had assets of de minimis value, and that the husband “for estate planning purposes desires to convert said separate property into community property.”³²

One section of the agreement stated: “All property, real and personal, of the parties

hereto, whether title thereto is held in the names of one or the other of the parties or both of the parties as joint tenants or otherwise, is the community property of the parties hereto, each having a present, existing, and equal interest therein.” Another section stated: “All of the property, real and personal, held in the name of Husband having its origin in his separate property no matter how received and/or earned, is hereby con-

that the motivations underlying the documents were irrelevant. The agreement made it clear that all the property previously held as the husband’s separate property was transmuted to community property on December 2002. The court stated: “It simply does not matter that the agreement, the trust, and the wills were all executed together as part of a single ‘estate planning’ strategy.”³⁵

The court’s key holding was that the ter-

deed. Application of Section 662 had not been disapproved in prior family law cases. After *Valli*, a spouse’s ability to rely on Section 662 to argue that property acquired during marriage in one spouse’s name is presumptively that person’s separate property is in doubt. The third way the decision impacted family law is to confirm that *Marriage of Lucas*³⁸ is no longer good law on that portion of its holding in which a motorhome acquired

In a dissolution, the spouse who has irrevocably relinquished interest in the insurance policy now may get a second bite at the apple if transmutation rules have not been satisfied.

verted to community property of Husband and Wife, and shall thereafter be the community property of the parties for estate planning hereto, each having a present, existing, and equal interest therein.” Section E of the agreement indicated that it was executed for “estate planning purposes.”³³

Concurrently with execution of the agreement, a trust that had been established by the husband 12 years earlier was amended and restated to add the wife as an additional trustee and settlor as of the date of establishment of the trust. Three of the real properties at issue had been transferred to the husband, as trustee of the trust, prior to 2002, and in 2002 one of the properties was transferred to the husband and wife, as trustees of the trust.

Finally, the trust provided: “Upon the filing of a petition for the dissolution of the marriage and/or separation by either Settlor, this Agreement is automatically terminated without further notice to third parties and either Trustee shall return to each Settlor the separate property they contributed to this Agreement not previously disposed of, together with each Settlor’s share of the Trust Estate which is community property. Upon the automatic termination, all dispositive provisions of this Trust Agreement shall be null and void other than returning the assets to the rightful owners....”³⁴

The trial court held that the agreement was ambiguous because of language in the recitals and in section E of the agreement indicating the agreement was executed for “estate planning” purposes as well as by the simultaneous execution of other “estate planning” documents (the trust and the wills). The wife appealed. The issue before the appellate court was whether the husband transmuted his separate real properties into community property by way of the 2002 agreement, which was part of his estate plan. In interpreting the transmutation statutes, the court determined

mination provision in the trust, which purported to automatically retransmute the property upon the filing of a dissolution petition.³⁶ According to the appellate court, the husband made an express declaration in writing of his unambiguous intention to transmute all of his separate property to community property as of the date he executed the 2002 agreement, notwithstanding its termination provision.

The Effect of *Valli* on Community Property

There are three ways in which the *Valli* decision has affected community property concepts. The first is that third-party transactions are not exempt from the transmutation rules. Although prior cases had referred to transmutation as interspousal transactions, no case had specifically stated that third-party transactions would be exempt. *Valli* addressed that specific issue. Third-party transactions are not exempt, at least in situations in which an asset is acquired during marriage, titled in one spouse’s name at the time of acquisition, and paid for with community property.

The second way *Valli* has affected family law is the application of Evidence Code Section 662. In 2008, in *In re Marriage of Brooks and Robinson*, the court relied on Section 662 to find that a piece of real property acquired and titled in a wife’s name was her separate property based on the title presumption contained in Section 662.³⁷ The issue arose in connection with a joined third party who purchased the property from the wife over her husband’s objections. The dispute was between the husband and the third-party buyer. The court, relying on prior family law cases, determined that the sale was not an interspousal transaction, so transmutation rules did not apply. The court further relied on the Evidence Code Section 662 presumption to support the view that the third-party purchaser was entitled to rely on the

during marriage and titled in wife’s name was confirmed as her separate property based on her husband’s failure to object.

It is noteworthy that the transmutation statutes, the Family Code statutory community property joint title presumptions, and statutory rights for reimbursement all arose out of response to *Lucas*. Although the court has neutralized the applicability of the Evidence Code title presumption, it has not necessarily eliminated the title presumption for all purposes, although the concurring opinion advocated for doing so. The supreme court has now defined a rule that transactions between a spouse and a third party may be subject to the transmutation rules.

The most obvious consequence of this rule is how it might affect estate planning. In *Valli*, the designation by the husband naming his wife as both owner and beneficiary of a policy on his life could be viewed as part of an estate plan to keep proceeds from being treated as part of his estate for estate tax purposes. By characterizing the property as community property and giving no consideration to title and ownership, the intended purpose for obtaining the life insurance policy would be nullified.

Even in the narrow instance in which one spouse intentionally and irrevocably relinquishes ownership to minimize taxes, transmutation may come into play if there is a dissolution. In a dissolution, the spouse who has irrevocably relinquished interest in the insurance policy now may get a second bite at the apple if transmutation rules have not been satisfied. These are difficult issues because in many cases, individuals or spouses enter into an estate plan without considering the consequences of divorce. Also, while one of the stated reasons for adopting the transmutation rules was to eliminate the ability of individuals to fabricate stories concerning oral transmutation or to establish characterization of property by oral testimony or con-

duct, strict adherence to the transmutation rules allows one party to possibly avoid expressing his or her real intentions by deciding to remain silent and let the transmutation rules govern.

There is another aspect to the *Valli* case that affects estate planning. It was acknowledged in *Valli* that the premium payments were paid with community property funds. Although not addressed by the court in *Valli*, the fact that the parties used community funds to pay the premiums could have had the effect of causing, in a situation like that of *Valli*, a portion of the life insurance proceeds to be included in a husband's estate when he dies even though he intentionally relinquished ownership and control over the policy. This is a potential pitfall. Better practice would be to ensure that if parties intend to keep a life insurance policy separate property, in addition to satisfying transmutation rules, the parties must ensure that premium payments are made from separate sources.

There now seems to be an inconsistency in how title to property applies in family law cases under the family law statutes. On the one hand, if property is acquired in joint forms, certain family law statutory rules apply. Under Family Code Section 2581, the property is presumed to be community property unless there is a signed writing to the con-

trary. However, pursuant to Family Code Section 2640, to the extent separate property is used to acquire or improve the property, the person whose separate property is used is entitled to dollar-for-dollar reimbursement of his or her separate property without interest or adjustment for appreciation. On the other hand, there is no comparable family law statute addressing a situation where title stands in one spouse's name. In such a situation, the general presumption applies as a starting point. In future cases in which similar situations arise, one argument might be to consider a community's right to reimbursement for funds expended as a remedy in cases where property titled in one spouse's name during marriage is found to be separate property.

Considerations for Estate Planners

The *Valli* case has many implications. With regard to life insurance policies, designating one spouse as an owner will not necessarily establish the policy as that spouse's separate property. In order to confirm such property as separate property, a written transmutation agreement would be required. Further, if premium payments are being made, those premium payments should be paid from separate property sources not community property sources. Otherwise, portions of the life

insurance proceeds may be included in the decedent's estate.³⁹

Given the fact that Evidence Code Section 662 may have limited application, if any, in the characterization of property in a family law proceeding, creditors may now have access to more property to collect community debt. Property titled in one spouse's name does not necessarily mean that said property is that person's separate property. Until the *Valli* decision, property titled in one spouse's name logically could be presumed to be that spouse's separate property. As a general rule, community property is liable for a debt incurred by either spouse before or during marriage, regardless of which spouse has the management and control of the property and regardless of whether the one or both spouses are parties to the debt or to a judgment for the debt.⁴⁰ So, it is possible that property that married persons believe is separate property because of title will have possible creditor exposure for collection of community debt. The holding may have an impact in bankruptcy cases. At least one bankruptcy case has cited *Valli* to support a finding that a claim identified as an asset should be considered community property in the bankruptcy proceeding even if not specifically identified as community property by the debtor.⁴¹

NORIEGA CHIROPRACTIC CLINICS, INC.

JESS T. NORIEGA, D.C.

Is proud to announce the opening of our Lynwood location

SERVICING: SOUTHGATE • BELLFLOWER • CUDAHY • NORTH LONG BEACH • WATTS

LYNWOOD HEALTH CENTER

11123 LONG BEACH BLVD.
LYNWOOD, CA 90262
(310) 726-8818

ONTARIO HEALTH SERVICES
602B N. Euclid Ave.
Ontario, CA 91764
(909) 395-5598

HUNTINGTON PARK HEALTH CENTER
3033 E. Florence Ave.
Huntington Park, CA 90255
(323) 582-8401

WHITTIER HEALTH SERVICES
13019 Bailey Ave. Suite F
Whittier, CA 90601
(562) 698-2411

MONTEBELLO HEALTH CENTER
604 North Monetebllo Blvd.
Montebello, CA 90640
(323) 726-8818

SOUTH CENTRAL HEALTH CENTER
4721 S. Broadway Blvd.
Los Angeles, CA 90037
(323) 234-3100

HIGHLAND PARK HEALTH CENTER
5421 N. Figueroa St.
Highland Park, CA 90042
(323) 478-9771

1 • 800 • NORIEGA

Personal Injury cases accepted on lien basis.

1 • 800 • 667 • 4342

The *Valli* case has extended the transmutation rules to more than just interspousal transactions. One difficulty in this decision is how it will affect expectations. In most situations, married individuals probably do not consult with divorce attorneys before entering into property transactions. In its departure from prior transmutation cases, *Valli* could affect estate planning and creditor rights in future dissolution cases, and family law practitioners should advise clients of these implications. ■

¹ See, e.g., *In re Marriage of Benson*, 36 Cal. 4th 1096 (2005); *In re Marriage of Sonne*, 48 Cal. 4th 118 (2010); *In re Marriage of Green*, 56 Cal. 4th 1130 (2013).

² *In re Marriage of Valli*, 58 Cal. 4th 1396 (2014).

³ *Id.* at 1406 (citing *In re Marriage of Barneson*, 69 Cal. App. 4th 583, 593 (1999)).

⁴ See *In re Marriage of Weaver*, 224 Cal. App. 3d 478 (1990) (Title presumption can only be rebutted by clear and convincing evidence.). See also *In re Marriage of Brooks and Robinson*, 169 Cal. App. 4th 176, 189 (2008).

⁵ See *Recommendation Relating to Marital Property Presumptions and Transmutations*, 17 CAL. LAW REVISION COM. REP., at 213 (1984).

⁶ FAM. CODE §852.

⁷ *Estate of MacDonald*, 51 Cal. 3d 262, 267 (1990).

⁸ *Id.*

⁹ *Id.* at 269-270.

¹⁰ *Id.* (citing *People v. Black*, 32 Cal. 3d 1, 5 (1982); *Watkins v. Real Estate Comm'r*, 182 Cal. App. 2d 397, 400 (1960)).

¹¹ *MacDonald*, 51 Cal. 3d 262.

¹² *In re Marriage of Haines*, 33 Cal. App. 4th 277, 293-301 (1995).

¹³ *Id.*

¹⁴ *In re Marriage of Barneson*, 69 Cal. App. 4th 583 (1999).

¹⁵ *Id.*

¹⁶ *In re Marriage of Starkman*, 129 Cal. App. 4th 659, 662 (2005).

¹⁷ *Id.* at 662.

¹⁸ *Id.* at 664.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at 665.

²² *Id.* at 664.

²³ *In re Marriage of Holtemann*, 166 Cal. App. 4th 1166 (2008).

²⁴ *Id.* at 1170.

²⁵ *Id.*

²⁶ *Id.* at 1170-71.

²⁷ *Id.* at 1172 (quoting *In re Marriage of Starkman*, 129 Cal. App. 4th 659 (2005)).

²⁸ *Marriage of Holtemann*, 166 Cal. App. 4th at 1173.

²⁹ *Id.*

³⁰ *Id.*

³¹ *In re Marriage of Lund*, 174 Cal. App. 4th 40 (2009).

³² *Id.*

³³ *Id.* at 52.

³⁴ *Id.* at 48.

³⁵ *Id.* at 52.

³⁶ *Id.* at 54.

³⁷ *In re Marriage of Brooks and Robinson*, 169 Cal. App. 4th 176 (2008).

³⁸ *In re Marriage of Lucas*, 27 Cal. 3d 808 (1980).

³⁹ See 26 C.F.R. §20.2041-1 (proceeds of life insurance).

⁴⁰ FAM. CODE §910.

⁴¹ *In re Lewis*, 515 B.R. 591 (2014). See also 11 U.S.C.A. §363(i).

A VISIONARY APPROACH TO RESOLVING DISPUTES

As the Gold Standard in Private Dispute Resolution we strive to offer only the *best* mediators and arbitrators. Judicate West proudly welcomes Greg David Derin, Harvard Negotiation instructor, "Power Mediator" and "Super Lawyer" to our exclusive roster of neutrals. He draws from over 3 decades of being a commercial litigator, local counsel for a Fortune 500 company and outside counsel for a major talent agency to mediate and arbitrate hundreds of cases. Greg is known to be calm, personable and results oriented!

AREAS OF EXPERTISE:

Entertainment/Music, Film & Television

Business/Commercial

Intellectual Property

Employment

Real Property



Greg David Derin, Esq.



Results Beyond DisputeSM

For more information or to schedule a case please call (800) 488-8805 or visit us at judicatewest.com

DOWNTOWN LOS ANGELES SAN DIEGO SAN FRANCISCO SANTA ANA WEST LOS ANGELES

Litigation Support & Tax Controversy

- Expert Witness Testimony for Federal Court
- Tax Evasion & Money Laundering
- IRS, FTB, EDD & SBOE Examinations / Kovel Letter Engagements
- Foreign Bank Accounts / Voluntary Disclosures

Nationally-recognized expertise. Contact us for C.V. and any questions.



GL Howard and Company CPAs, LLP

LITIGATION SUPPORT · TAX CONTROVERSY · INTERNATIONAL TAX ACCOUNTING SERVICES · TAX COMPLIANCE & PLANNING

10417 Los Alamitos Blvd. • Los Alamitos, CA 90720
Ph. (562) 431-9844 x111 • www.glhowardandcompanycpas.com
Gary L. Howard, CPA • gary@glhowardcpa.com