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Toward True Equality: Reforms in California's Community Property Law

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TOWARD TRUE EQUALITY: REFORMS IN CALIFORNIA'S COMMUNITY PROPERTY LAW

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Effective January 1, 1975, the Dymally Amendments[1] change the legal relationship between spouses in California by giving husband and wife joint and several management and control of the community property. The amendments will substantially affect the underlying presumption of California's community property system and expand the rights of the married woman in California. The expanded rights of women will undoubtedly affect business entities dealing with the property of the marriage community.[2]

The Equal Rights Amendment,[3] which would eliminate sex as a factor in determining the legal rights and responsibilities of men and women, was the impetus behind the formation of the Joint Committee on Legal Equality which drafted Senate Bill 569 (the Dymally Amendments).[4] The Dymally Amendments are an attempt to implement through California community property law the policies underlying the federal proposed amendment.

The major sections of the amendments, explored in detail below, cover management and control, support obligations, head of household and domicile, retroactivity, contractual obligations, and

1. Cal. Stat. 1973, ch. 987, 1897.
2. Bonanno, *The Constitution and "Liberated" Community Property in California—Some Constitutional Issues and Problems under the Newly Enacted Dymally Bill*, 1 HASTINGS CONST. L.Q. 97, 101 (1974).
3. H.R.J. RES. 208, 92d Cong., 2d Sess., 86 Stat. 1523 (1972). Ratification of the Equal Rights Amendment was effected in California by RES. ch. 148, vol. 2, 3440 (1972).
4. Interview with Mari Goldman, Executive Assistant to State Senator Mervyn Dymally and Chief Consultant to the Joint Committee on Legal Equality, in Sacramento, Cal., June 11, 1974.

real property transactions. Special attention is given the amendment's affect on credit transactions and the rights of married women.

In the present transitional period immediately after the amendments have become effective, the courts will be forced to identify, define and distinguish the meaning of the amended statutes. The recent Texas and Washington statutory reforms are discussed in order to compare the California legislative approach to equality of management and control to the approaches taken in two other states. The effect of the equal management and control amendments in Texas and Washington has not yet been reflected in the case law. Commentators generally agree that Washington is close to achieving true equality of management.[5] The result in Washington is particularly instructive because the Washington community property laws were originally derived almost solely from California law and because the Washington reforms enacted in 1972 are largely analagous to the Dymally Amendments in California.[6] What follows is an overview of the Dymally Amendments—an examination of their background and meaning, a discussion of anticipated effects in the marketplace and a look at sources of comparison.

Professor Kanowitz writing in 1969 observed that "the continued legal position of the husband as head of the household and the rule vesting in him the fundamental powers of management and control suggest that much ground needs to be covered before California wives will have achieved equal legal status with their husbands with respect to their community property."[7] The effect of the Dymally Amendments is to cover this ground. The broad object of the Dymally Amendments is to perfect a legal equality between husband and wife. The legislation amends the management and control[8] and the support of spouse[9] code sections and repeals the "Husband as Head of Family" code section.[10]

5. K. DAVIDSON, R. GINSBURG & H. KAY, CASES AND MATERIALS ON SEX-BASED DISCRIMINATION 165 (1974).

6. Cross, *The Community Property Law in Washington*, 49 WASH. L. REV. 729, 733 (1974).

7. L. KANOWITZ, WOMEN AND THE LAW: THE UNFINISHED REVOLUTION 66 (1969).

8. Cal. Stat. 1973, ch. 987, § 14, *amending* CAL. CIV. CODE § 5125 (West 1970) (codified at CAL. CIV. CODE § 5125(a)-(e) (West Supp. 1975)).

9. Cal. Stat. 1974, ch. 1206, § 6, *repealing* CAL. CIV. CODE § 5130 (West 1970) (originally enacted 1972); Cal. Stat. 1973, ch. 987, § 17 *amending* CAL. CIV. CODE § 5132 (West 1970) (codified at CAL. CIV. CODE § 5132 (West Supp. 1975)).

10. Cal. Stat. 1973, ch. 987, § 2, *repealing* CAL. CIV. CODE § 5101 (West 1970) (originally enacted 1872).

In particular, the Dymally Amendments and subsequent legislation have removed the sanction of the law for the patriarchal household, eliminated the inferior legal status of wives, and rejected the view that wives are primarily homemakers, dependent socially and economically upon their husbands. The spouses are, instead, recognized as full-fledged partners in marriage.

Management and Control

Historically, the rights and obligations of a wife and husband in community property have largely depended on their relative powers of management and control.[11] In effect, the husband has had sole ownership of community property during marriage arising from near-absolute management and control of that property.[12]

Since the husband has had exclusive management and control of the bulk of the community property,[13] it is unclear to what extent, if any, the husband's powers are diminished by the Dymally Amendments. It is clear, however, that the amendments establish equal and independent (rather than equal and joint) managerial authority.[14]

The wife and husband are now equal owners of the community property during marriage. With respect to personal community property, the amendments clearly imply that wife and husband have equal and independent managerial authority.

> [E]ither spouse has the management and control of the community personal property . . . with like absolute power of disposition, other than testamentary, as the spouse has of the separate estate of the spouse.[15]

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11. H. VERRALL & A. SAMMIS, CASES AND MATERIALS ON CALIFORNIA COMMUNITY PROPERTY 13 (2d ed. 1971).

12. CAL. CIV. CODE § 5125 (West 1970), *as amended*, CAL. CIV. CODE § 5125 (West Supp. 1975); CAL. CIV. CODE § 5127 (West 1970), *as amended*, CAL. CIV. CODE § 5127 (West Supp. 1975). *See* Grolemund v. Cafferata, 17 Cal. 2d 679, 111 P.2d 641 (1941), *cert. denied*, 314 U.S. 612 (1941); Kirkwood, *The Ownership of Community Property in California*, 7 S. CAL. L. REV. 1, 16 (1933); Simmons, *The Interest of a Wife in California Community Property*, 22 CALIF. L. REV. 404, 418 (1934).

13. Cal. Stat. 1951, ch. 1102, § 1 (repealed 1973) exempted the wife's uncommingled earnings and personal injury damages from the husband's management and control.

14. For the limited exceptions to the equal and independent managerial authority of spouses see CAL. CIV. CODE § 5125(b)-(d) (West Supp. 1975) (personal community property); for a discussion of management and control of real community property see text accompanying notes 108-31 *infra*.

15. CAL. CIV. CODE § 5125(a) (West Supp. 1975) (emphasis added).

If absolute power means that a spouse "may use it or dispose of it according to his pleasure subject only to general laws,"[16] then each spouse can now legally dispose of or obligate the community personal property without consent or concurrence of the other spouse. In this way, each spouse has managerial authority, with some exceptions, that is not dependent on the participation of the other spouse—it is an independent authority.

With respect to real community property the law states that

> either spouse has the management and control of the community real property . . . but both spouses . . . must join in executing any instrument by which such community real property or any interest therein is leased for a longer period than one year, or is sold, conveyed, or encumbered.[17]

This language would suggest that joint management and control is the exception (albeit a broad and important one) and that equal and independent management and control is the general rule. The legislative history of the amendments corroborates this conclusion. Earlier versions of the bill provided for joint management and control with respect to all of the community property;[18] when S.B. 569 was introduced, and subsequently enacted, the concept of joint management had been dropped and the concept of independent managerial authority had been substituted.[19] Courts have frequently relied on just such legislative history of a statute to hold the legislative intent to be a conscious rejection of the abandoned legislative scheme.[20] The Texas reforms, unlike the California reforms, have not granted the spouses equal management and control of the community property.[21] Although some Texas reformers sought true community partnership management, it was felt by the law revision committee that such an approach

> had little, if any chance of being adopted; most men objected that it would give wives too much control over property generated by the husband's efforts. Additionally, many women ob-

16. CAL. CIV. CODE § 679 (West Supp. 1975).
17. CAL. CIV. CODE § 5127 (West Supp. 1975).
18. Cal. S.B. 45 (Reg. Sess. 1972); Cal. S.B. 1447 (Reg. Sess. 1971).
19. Cal. S.B. 569 (Reg. Sess. 1973).
20. *See, e.g.*, Farmers Ins. Exch. v. Gever, 274 Cal. App. 2d 625, 634, 55 Cal. Rptr. 861, 867 (1967).
21. K. DAVIDSON, *supra* note 5, at 165.

> jected to this approach because it did not exempt the wife's earnings and income from her separate property from liabilities incurred by the husband.[22]

The Texas reforms are instructive because they represent the result of compromise and illustrate that equality in legal theory is not necessarily equality in fact. In contrast, the Dymally Amendments, in California, represent a great stride toward equality with relative legislative ease.

Since the 1967 Texas amendments,[23] each spouse has sole management and control of his or her separate earnings, the income from his or her separate property and the community property he or she would have owned if single.[24] If the community property subject to the sole management and control of one spouse is mixed or combined with the community property subject to the sole management and control of the other spouse, then the combined community property is subject to joint management and control.[25] This "mixed or combined" community property constitutes a third species of community property for management and control purposes. The extent of property subject to joint management and control will depend upon how carefully the two categories of separate community property are segregated and the amount of property produced by joint effort.[26]

The California approach to equal management, by contrast, is less intricate. The only significant distinction in California is between real and personal community property. In effect, the California approach will result in less need for tedious judicial classifications of community property.

In Washington prior to the 1972 amendments, management and control of the community property was the responsibility of the husband.[27] The 1972 amendments granted to the wife management powers equal to those of the husband. Either spouse acting alone may manage the community property as if it were that

22. McKnight, *Texas Community Property Law—Its Course of Development and Reform*, 8 CAL. WEST. L. REV. 117, 130 (1971).
23. TEX. FAM. CODE ANN. § 5.22 (Vernon 1970).
24. TEX. FAM. CODE ANN. § 5.22(a) (Vernon 1970).
25. TEX. FAM. CODE ANN. § 5.22(b) (Vernon 1970).
26. K. DAVIDSON, *supra* note 5, at 165; McKnight, *supra* note 22, at 138-39.
27. WASH. REV. CODE § 26.16.030 (West 1961), *as amended*, WASH. REV. CODE § 26.16.030 (West Supp. 1974).

spouse's separate property.[28]

In the areas of management and control, retroactivity, standard of care, contractual obligations, and real property transactions, Washington poses an interesting source of comparison with California and, perhaps, most closely approximates the California reforms. In both California and Washington, neither the husband nor the wife may give or transfer community personal property without valuable consideration or the consent of the other spouse. The equal and several management and control granted to the wife is analagous in the two states.

Retroactivity

Clarification of the retroactivity issue will go far in determining the legal impact of the management and control sections of the Dymally Amendments. Unless the legislature expresses a contrary intent, a statute is held to be prospective only.[29] The Senate Judiciary Committee deleted the words of retroactivity contained in the amendments as originally introduced. It seems fair to conclude that the Dymally Amendments are intended, with one exception, to be prospective only. Fortunately, the legislature added the phrase "whether acquired prior to or on or after January 1, 1975"[30] to the management and control sections, thus making these specific sections expressly retroactive.

The retroactivity question is not, however, completely settled. Though management and control sections are expressly retroactive, they cannot be so applied if such application is unconstitutional.[31] One writer has already suggested that such a challenge could arise on due process grounds.[32] No doubt anticipating such a challenge, the legislature has made findings in support of retroactivity:

> (1) the extension of the right to manage and control all of the community property of a marriage to both spouses entails important social and economic considerations, (2) the right to

28. WASH. REV. CODE § 26.16.030 (West Supp. 1974).
29. People v. Harmon, 54 Cal. 2d 9, 25, 351 P.2d 329, 339, 4 Cal. Rptr. 161, 171 (1960); Aetna Cas. & Surety Co. v. Indiana Indus. Accident Comm'n, 30 Cal. 2d 388, 393, 182 P.2d 159, 161 (1947).
30. CAL. CIV. CODE §§ 5125, 5127 (West Supp. 1975).
31. Roberts v. Wehmeyer, 191 Cal. 601, 605, 218 P. 22, 23 (1923).
32. Bonanno, *supra* note 2.

> manage and control community property is not a fundamental right which may not be divested by the Legislature and is not accorded the same status as the rights of the spouses in community property during marriage which are, and remain, present, existing, and equal, and (3) the application of the right to manage and control community property to all community property of a marriage, whether acquired before or after January 1, 1975, is necessary to achieve social and economic equality and facilitate commercial transactions.[33]

Like California, Washington follows the rule that unless there is an intention expressed in the statute, or clearly implied therein, that the statute operate retroactively, the statute will be deemed prospective only.[34] Because no intention is stated for retroactive application, the equal management and control statute in Washington operates prospectively only. Thus, the community possesses two kinds of community personal property—that acquired prior to the effective date of the 1972 amendments subject to the husband's management and control and that acquired since the effective date of the 1972 amendments subject to equal management and control. The Washington result can be contrasted with the California reforms which expressly required retroactivity with respect to management and control.

Standard of Care

The spouses' financial obligations to one another since passage of the Dymally Amendments remain as before based on their confidential relationship.[35] Inter-spousal contractual transactions are governed by the duty owed by a trustee to a beneficiary.[36] As manager and controller of the community property, the husband acted as trustee for his wife with respect to her one-half of the community.[37] He was obliged to act with "highest good faith";[38] he could not obtain any advantage over his wife by misrepresenta-

33. Cal. Stat. 1974, ch. 1206, § 1.
34. State v. Ladiges, 63 Wash. 2d 230, 386 P.2d 416 (1963); Sorenson v. Western Hotels Inc., 55 Wash. 2d 625, 349 P.2d 232 (1960).
35. CAL. CIV. CODE § 5103 (West 1970).
36. CAL. CIV. CODE § 2215 *et seq.* (West 1970).
37. *See, e.g.*, Vai v. Bank of America, 56 Cal. 2d 329, 337-39, 364 P.2d 247, 251-53, 15 Cal. Rptr. 71, 75-77 (1961).
38. CAL. CIV. CODE § 2228 (West 1970).

tion, concealment, or fraud.[39]

The husband's duty to act as a fiduciary in highest good faith did not extend to third party transactions with the community property during marriage. In his business dealings he was only limited in that he could not dispose of community real property without the joinder of his wife[40] or of community personal property without receiving valuable consideration.[41] It has been held unnecessary that a husband's contract disposing of community personal property be for "adequate consideration" substantially equal in value to the property disposed of; when he received some consideration for the property, he fulfilled his obligation under the law.[42]

A wife could seek to remedy or prevent her husband's mismanagement or dissipation of the community by contracting with him[43] or adjudicating her rights in a divorce or dissolution proceeding. However, unless there was a "willful misappropriation"[44] by a husband, the community property was divided equally at dissolution; the wife's one-half, therefore, reflected the improvident losses sustained by the community under the husband's management.[45] The wife's situation was well characterized as one in which her husband had the "freedom to make unwise purchases, to speculate freely, and to sell community personal property foolishly."[46]

Under the Dymally Amendments as before, neither spouse may intentionally dissipate the community property.[47] The dissolution court retains the power to reimburse a spouse if the other spouse has "deliberately squandered or misused" community funds.[48] In addition, the non-participating spouse in a transaction

39. *See, e.g.*, Baker v. Baker, 260 Cal. App. 2d 583, 586, 67 Cal. Rptr. 523, 524 (1968).
40. CAL. CIV. CODE § 5127 (West 1970), *as amended*, CAL. CIV. CODE § 5127 (West Supp. 1975).
41. CAL. CIV. CODE § 5125 (West 1970), *as amended*, CAL. CIV. CODE § 5125 (West Supp. 1975).
42. Bank of California v. Connolly, 36 Cal. App. 3d 350, 111 Cal. Rptr. 468 (1973).
43. CAL. CIV. CODE § 5103 (West 1970).
44. *See* CAL. CIV. CODE § 2800 *et seq.* (West 1970).
45. Grant, *How Much of a Partnership is Marriage? Community Property Rights under the California Family Law Act of 1969*, 23 HASTINGS L.J. 249, 256 (1971).
46. Note, *The Husband's Fiduciary Duty—More Protection for the California Wife*, 14 STAN. L. REV. 587, 596 (1962).
47. CAL. CIV. CODE § 5103 (West 1970); CAL. CIV. CODE § 4800 *et seq.* (West Supp. 1975).
48. Cal. Civ. Code § 4800(b)(2) (West Supp. 1975). *See* CONTINUING EDUCA-

involving community real property may seek an injunction against or reimbursement from the conveying spouse.[49] The existence of this remedy with respect to community real property is parallel to a spouse's remedy of setting aside a transfer of community personal property without valuable consideration.

In an earlier version of his bill, Senator Dymally proposed that each spouse be a trustee for the other spouse.[50] Each spouse would then be subject to the statutory rules governing fiduciary relationships—the standard of "highest good faith."[51] This prior bill, however, was rejected by the legislature, and the Dymally Amendments, as enacted the following year, contained no provision for good faith obligations between the spouses.

To protect the marital community from dissipation, waste, or mismanagement by one spouse, the legislature subsequently imposed upon each spouse a good faith standard of care: "each spouse shall act in good faith with respect to the other spouse in the management and control of the community property."[52] Although each spouse has extensive independent and several authority to manage or obligate the community, each spouse must exercise that authority in good faith.

The effectiveness of the limitation of good faith on both spouses will depend upon whether good faith is interpreted as a subjective or objective standard. If the former, a spouse meets his/her managerial duty by exercising his/her powers in the community's interests as that spouse honestly perceives them to be. If the latter, a spouse meets his/her managerial duty only by exercising his/her powers as an ordinary reasonable person. The objective standard contemplates the exercise of good judgment in business dealings by a spouse. Until this issue is resolved, the post-Dymally spouse will be uncertain as to whether he/she is held to a standard prohibiting intentional and negligent mismanagement or intentional mismanagement alone.

In determining which standard of care to adopt in California, we should look to how this issue was resolved in Washington

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TION OF THE BAR, ATTORNEY'S GUIDE TO FAMILY LAW ACT PRACTICE 260-62 (2d ed. 1972).

49. *See* text accompanying notes 176-77 *infra.*
50. Cal. S.B. 45, § 20 (Reg. Sess. 1972).
51. CAL. CIV. CODE § 2228 (West 1970).
52. Cal. Stat. 1974, ch. 1206, § 4.

and to the criticism which followed. The standard by which to measure the management and control of the wife is the same standard as was applied to the husband's management and control prior to 1972.[53] If the husband exercised his discretion in the community interest, as he saw it, the wife was without power to frustrate his acts.[54] Inherent in this standard is the assumption that it was the good faith rather than the good judgment of the husband that mattered. The good faith requirement stemmed from the husband's sweeping power as statutory manager.[55]

The 1972 amendment, by granting the wife equal and independent management and control, logically required the application of the same good faith standard to her exercise of management and control of the community property.[56]

It has been urged in debate surrounding the passage of the recent community property laws that the standard of subjective good faith be retained in that state. If the good judgment standard were applied, it is argued, the "courts would be asked to choose between alternative business decisions and thus would undertake to decide what is in the best interests of the community."[57] Litigation would result where there was merely disagreement between spouses with respect to a course of action taken by one of the spouses. Where such litigation between spouses is likely, third parties will regularly demand joint participation of the spouses to insure against a non-participating spouse overturning the transaction. On this basis, the standard of good judgment is "impractical and undesirable."[58] Because the California amendments provide for good faith and retroactivity in the management and control sections as "necessary to . . . facilitate commercial transactions,"[59] the subjective standard would more appropriately fulfill the legislative intent.

On the other hand, the subjective standard follows a traditional approach—an approach which formerly justified the husband's management and control as facilitating commercial transactions

53. Cross, *Equality for Spouses in Washington Community Property Law—1972 Statutory Changes*, 48 WASH. L. REV. 527-43 (1972).
54. Hanley v. Most, 9 Wash. 2d 429, 115 P.2d 933 (1941).
55. *See* Cross, *The Community Property Law In Washington*, 15 LA. L. REV. 640, 642 (1955).
56. For a contrary opinion see K. DAVIDSON, *supra* note 5.
57. Cross, *supra* note 53, at 542.
58. *Id.*
59. Cal. Stat. 1974, ch. 1206, § 1.

with the community.[60] It has been suggested that if the wife is to gain any new rights under the equal management and control statutes, a broader standard of conduct should be applied, old concepts swept away, and the obligation of good judgment adopted.[61]

Head of Family and Domicile

Prior to the Dymally Amendments, the husband was the designated legal head of the family.[62] The Dymally Amendments repeal this designation since the concept is incongrous with equal management of the community. The presumption that the husband is head of the family continues to operate only in very limited circumstances—with regard to establishing a homestead, for example.[63]

Under the same provision which made him head of the family, the husband enjoyed the right to choose the place of legal residence of the family.[64] Until recently, the law defined the residence or domicile of a married woman as that of her husband unless the spouses were separated or divorced. Thus, where a husband was hospitalized in one county and his wife was living in an adjoining county, her will was probated in the county of her husband's hospitalization since she assumed his domicile.[65] Prior to the Dymally Amendments, the wife gained the right to retain her own legal residence or domicile regardless of the legal residence of her spouse.[66] The Dymally Amendments affirm this right. Prior to the Dymally Amendments, a husband, as manager and controller, had the freedom to establish mode of living. For example, a husband might choose a luxurious life-style, pay for it from his separate property, and at dissolution demand reimbursement from the community; his right to reimbursement was defeated only if he neglected to trace the funds.[67] A wife under the amendments now has an equal right to determine the mode of living of the community. Both spouses, however, are limited by the obligation of good faith.

60. Bendheim, *Community Property: Male Management and Women's Rights,* 1972 LAW & SOC. ORDER 163, 165-66.
61. K. DAVIDSON, *supra* note 5, at 166-69.
62. CAL. CIV. CODE § 5101 (West 1970) (repealed 1973).
63. CAL. CIV. CODE § 1261 (West 1970).
64. CAL. CIV. CODE § 5101 (West 1970) (repealed 1973).
65. *In re* Wick's Estate, 128 Cal. 270, 60 P. 867 (1900).
66. CAL. GOV'T CODE § 244(e) (West Supp. 1975), *amending* CAL. GOV'T CODE § 244(e) (West 1970).
67. See v. See, 64 Cal. 2d 778, 415 P.2d 776, 51 Cal. Rptr. 888 (1966).

Spousal Support

The Dymally Amendments make two significant changes in the law of spousal support. Now the spouses are equally responsible for necessary community living expenses,[68] and they are not personally liable for such expenses unless the community property and quasi-community property[69] are exhausted.[70]

Although they "contract toward each other" an obligation of mutual support,[71] the husband hitherto had, in theory, the more onerous duty of spousal support. While living together, the wife could demand support from her husband's entire separate estate without regard to actual need. The husband could demand support from his wife's separate estate only under circumstances of actual need and only to a limited extent.[72] In practice, however, the wife's right to support was much more circumscribed. Principally because enforcement mechanisms were inadequate, she generally could get only what he chose to give her.[73] This disparity in support responsibilities was justified by the state interest in preventing wives from becoming public charges. Since the wife was expected to stay at home, the law perceived her as a legal dependent. The husband's duty of support was the means to protect society from its financial fears of pauperism.[74]

68. "Necessary living expenses" has been interpreted by the courts as the cost of food, clothing, shelter and other needs commensurate with social position and standard of living of the marital community. *See generally* Davis v. Davis, 65 Cal. App. 499, 501, 224 P. 478, 479 (1924); Winsom v. McCarthy, 48 Cal. App. 697, 701, 192 P. 337, 339 (1920).

69. CAL. CIV. CODE § 4803 (West 1970) defines quasi-community property as "all real or personal property, wherever situated, . . . which would have been community property if the spouse who acquired the property had been domiciled in this state at the time of its acquisition."

70. CAL. CIV. CODE § 5132 (West Supp. 1975), *amending* CAL. CIV. CODE § 5132 (West 1970).

71. CAL. CIV. CODE § 5100 (West 1970).

72. CAL. CIV. CODE § 5132 (West 1970), *as amended*, CAL. CIV. CODE § 5132 (West Supp. 1975) provided that the wife's duty to support her husband arose only after his separate property, the community property and the quasi-community property were exhausted and he was "unable, from infirmity, to support himself." CAL. CIV. CODE § 5121 (West 1970), *as amended*, CAL. CIV. CODE § 5121 (West Supp. 1974) made the wife's separate property acquired by gift from her husband liable for his support, CAL. CIV. CODE § 5124 (West 1970) (repealed 1973) (originally enacted 1872) made the wife's earnings and community property personal injury recovery liable for his support.

73. CITIZEN'S ADVISORY COUNCIL ON THE STATUS OF WOMEN, WOMEN IN 1971, Appendix C; THE EQUAL RIGHTS AMENDMENT AND ALIMONY AND CHILD SUPPORT LAWS 38 (1972). *Cf.* Ryman, *A Comment on Family Property Rights and the Proposed 27th Amendment*, 22 DRAKE L. REV. 505, 510 (1973).

74. Department of Mental Hygiene v. O'Connor, 246 Cal. App. 2d 24, 27, 54 Cal. Rptr. 432, 435 (1966); Miller v. Superior Court, 9 Cal. 2d 733, 739, 72 P.2d 868, 872 (1937); Paulsen, *Support Rights and Duties Between Husband and Wife*, 9 VAND. L. REV. 709, 713 (1956).

Under the Dymally Amendments, the disparity is abrogated. Either spouse can, at least in theory, demand support from the other spouse's entire separate estate when the community property and quasi-community property are exhausted. Now, either spouse may demand such support though that spouse has not exhausted his or her separate estate. A husband need not be "unable, from infirmity, to support himself" in order to demand support from his spouse.[75] Either spouse's separate property can be reached by creditors who furnish necessaries to the community.[76]

Credit Transactions

The greatest practical achievement of the new legislation may be realized in the area of women's credit rights. Now that married women have equal management and control of their community assets, the last legal reason for discriminating against them in credit transactions has been removed. An analysis of the effects of earlier statutes, judicial decisions and societal views of women's roles on the accessibility of credit to women provides a background for an estimate of the impact of the new legislation.

The general rule was and is that liability for credit transactions follows management and control.[77] Since 1927, the respective interests and rights of husband and wife in community property have been defined as "present, existing and equal interests under the management and control of the husband."[78] The community was not liable for the wife's debt unless the husband secured the debt by his pledge or mortgage.[79] Subsequently, judicial interpretations minimized the wife's right to an "equal" interest and emphasized the husband's power to manage and control the community property.[80] There was clearly some statutory justification for a potential lender to be wary of giving credit to a married woman without her husband's pledge.

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75. CAL. CIV. CODE § 5132 (West Supp. 1975), *amending* CAL. CIV. CODE § 5132 (West 1970).
76. CAL. CIV. CODE § 5121 (West Supp. 1975), *amending* CAL. CIV. CODE § 5121 (West 1970).
77. Cal. Stat. 1974, ch. 1206, § 1 states that:
> the liability of community property for the debts of the spouses has been coextensive with the right to manage and control community property and should remain so.
78. CAL. CIV. CODE § 5105 (West 1970).
79. CAL. CIV. CODE § 5116 (West 1970), *as amended*, CAL. CIV. CODE § 5116 (West Supp. 1975).
80. Grolemund v. Cafferata, 17 Cal. 2d 679, 111 P.2d 641 (1941); Smedberg v. Bevilockway, 7 Cal. App. 2d 578, 46 P.2d 820 (1935).

However, the married woman's creditors were not without remedy if the husband had not secured her contract. Exceptions to the law that community property was exempt from attachment for the unsecured debt of the wife included (1) transactions in which the wife acted expressly or impliedly as an agent for her husband,[81] and (2) transactions for the purchase of necessaries. If a debt was incurred for a necessity of life by either the husband or wife for the benefit of either the husband or wife, the community property and separate property of either party was liable therefor. The practical effect of the latter exception was that creditors *could* reach the property supposedly exempt from liability and continue to deny married women credit on the grounds that the community property was under the husband's management and control and could not be liable for the wife's debts.

This anomalous situation was due in part to the imprecise meaning of "necessaries."

> The term "necessaries," in the law of husband and wife, is a relative term, to be applied to the circumstances and conditions of the parties. Necessaries are not confined to the bare essentials of life; whatever tends to relieve distress or in some essential particular to promote comfort may be deemed a necessary.[82]

The definition is elastic enough to cover a multitude of transactions, and courts considered the parties to and the circumstances of each case. If an obligation were deemed a necessary, the creditor's rights were extensive. For example, creditors recovred from a wife for necessaries contracted for by the husband without an allegation that the wife owned property from which payment could be obtained.[83] When imposing liability for necessaries against the separate property of a wife, the courts held that the judgment "should be against the wife (rather than against her property), but . . . it should be specifically limited with a direction that it be satisfied only out of such separate property of the wife as is made liable by section 5121."[84] Such a judgment purported-

81. General Ins. Co. of America v. Schian, 248 Cal. App. 2d 555, 56 Cal. Rptr. 767 (1967); Hulsman v. Ireland, 205 Cal. 345, 270 P. 948 (1928); Stegeman v. Vandevenster, 57 Cal. App. 2d 753, 135 P.2d 186 (1943); Meyer v. Thomas, 37 Cal. App. 2d 720, 100 P.2d 360 (1940).
82. 41 C.J.S. *Husband & Wife* § 57 (1944).
83. Smith v. Bentson, 127 Cal. App. Supp. 789, 15 P.2d 910 (1932).
84. Credit Bureau of Santa Monica Bay Dist., Inc. v. Terranova, 15 Cal. App. 3d 859, 93 Cal. Rptr. 542 (1971).

ly protected the wife. But the creditor had a personal judgment against the wife or widow and that judgment could be enforced for ten years from the date of judgment with a yearly interest rate of 7%. It is reasonable to conclude that any woman subject to such a judgment, unenforceable though it may be, would have no credit available to her until at least such time as the judgment was satisfied.

If a creditor could not collect debts owed under the exception for necessaries, he could alternately bring suit under the exception for agency relationships. Even though the wife's agency is undisclosed to the creditor at the time of the transaction, the husband may be sued as an undisclosed principal for a debt incurred by the wife as his agent with actual authority.[85]

Women have been denied credit because theoretically creditors could only reach the community or separate property of the debtor who contracted for the debt and managed and controlled the property in question. The foregoing cases illustrate that a wife's separate property, under her management, was liable for her husband's debts. Conversely, the community property, under the husband's management and control, was liable for a wife's debt for necessaries or under the agency theory even though she had no management or control thereof.

The strong public policy for the protection of creditors was and is an obstacle to equal rights for women in this area.[86] The persistence of the stereotype of woman only as wife, mother or homebody is also a great societal impediment to equality for women in contractual and credit transactions.[87] A corollary to the stereotype of man-as-breadwinner, woman-as-housewife, is the notion that women are incompetent to handle financial matters. This view has frequently been reflected in business practices, such as the difficulties women have experienced in obtaining credit.[88]

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85. Hulsman v. Ireland, 205 Cal. 345, 270 P. 948 (1928).

86. *See, e.g.*, Weinberg v. Weinberg, 67 Cal. 2d 557, 432 P.2d 709, 63 Cal. Rptr. 13 (1967). The court stated:

> The policy of protecting the husband's creditors outweighs the policy of protecting family income even from premarital creditors of the husband. Community property is therefore available to such creditors.

Id. at 561, 432 P.2d at 711, 63 Cal. Rptr. at 15.

87. Testimony of Betty Howard, Director of Woman's [sic] Affairs, Minneapolis Dep't of Human Rights, before the Nat'l Comm'n on Consumer Finance, May 22, 1972.

88. H. BERMAN, UPDATE: WOMEN'S PLACE UNDER CALIFORNIA LAW, January, 1974 (A.C.L.U. of Northern California).

The husband's management and control and the requirement that the husband's pledge or mortgage secure his wife's contracts reinforced these societal prejudices. Since 1951, however, a working wife has had the management and control of the community property earned by her or received by her in satisfaction of a judgment or agreement for personal injury damages, until she commingled this property with community property subject to the husband's management and control. Furthermore, a wife's separate property was and is liable for her debts.[89] A working wife or a wife with separate property should be able to get credit. Yet most credit agencies, such as banks, stores and credit card companies have refused to give credit to women in general.[90]

There are two explanations for this inequitable situation. First, there is an old maxim stating that "credit is the capacity for being trusted."[91] Underlying the legal justifications which made lenders wary of married women was the erroneous belief that women in general were not trustworthy. It appears that creditors believed that a married woman who worked or had separate property would stop working, commingle her earnings or give away her separate property in order to avoid payment of a debt. There is no rational basis for believing "that a woman would be more likely to fraudently transfer her property than a male, and any denial of credit to a married woman on this basis is discriminatory."[92] Second, women's insecurity about their own image contributed substantially to the problem. Why did women who worked or owned separate property not challenge lenders who denied them credit? A common response was: "When I applied for a credit card and they turned me down, I felt there must be something wrong with me."[93]

The major problem areas relating to women and credit prior to the recent laws can be summarized as follows:

> 1. Single women have more trouble obtaining credit than single men . . . although single women are considered as good or better risks than single men.

89. CAL. CIV. CODE § 5121 (West Supp. 1974).
90. Brown, *The Discredited American Woman: Sex Discrimination in Consumer Credit*, 6 U.C. DAVIS L. REV. 67 (1973).
91. People v. Wasservogle, 77 Cal. 173, 19 P. 270 (1888).
92. Brown, *supra* note 90, at 67.
93. Confidential interviews with 15 women (widowed, divorced or married and all currently employed), in San Mateo, Cal., July, 1974.

> 2. Creditors generally require a woman who marries to reapply for credit, usually in her husband's name, although men who marry are not similarly treated.
>
> 3. Creditors are often unwilling to extend credit to a married woman in her own name.
>
> 4. Creditors often refuse to count the wife's income when a couple applies for credit.
>
> 5. Women who are divorced, widowed or separated have trouble reestablishing credit because a prior account may have been in the husband's name.[94]

The current laws will alleviate these problems. The legal rationale for discrimination against married women in credit practices was eliminated by the grant of equal rights to manage and control community property.

Third party rights, duties and obligations regarding extension of credit to married women are indirectly defined by reference to the law that the community property is liable for either spouse's post-nuptial contractual debts incurred prior to, on or after January 1, 1975.[95] Third party implied rights and duties may arise from a transaction under married women's general statutory authority to obligate all the community property. But there are no specific criteria to indicate how a wife may enforce her rights against third parties. A specific civil remedy against discriminatory credit practices has been enacted to buttress the broad outlines of the Dymally Amendments with specific standards of conduct and remedies. The Waxman credit law[96] resulted from the history of women's credit disabilities and should be viewed as a vital implementation of the Dymally community property laws.

This Act prohibits denying credit to an unmarried woman if her property or earnings are such that a man with the same amount of property or earnings would get credit. Legislation now pending (hereafter A.B. 181) would prohibit denying or offering credit to any person, married or single, male or female, in any way that discriminates or favors on the basis of sex or marital

94. NATIONAL COMM'N ON CONSUMER FINANCE, CONSUMER CREDIT IN THE UNITED STATES: AN OVERVIEW OF THE STUDY AND SOME CONCLUSIONS 1 (1972).
95. Cal. Stat. 1974, ch. 1206, § 2.
96. CAL. CIV. CODE § 1812.30 (West Supp. 1975).

status.[97] Thus, the general design of equality in the Waxman law is further refined. The law now requires a credit agency to identify the credit history of each spouse and of their joint account if a spouse so requests.[98] A.B. 181 requires a credit agency to keep separate reports for each person in their records. Creditors can, by law, utilize other relevant factors, excluding sex, in deciding whether to extend credit to a woman.[99] The pending bill prohibits utilization of any factor which is solely applicable to one sex. Although the present requirement that the violation be willful is unchanged, the scope of relief is broadened under A.B. 181 to include class action suits, injunctive relief and an award of attorney's fees. New sections provide broad standing to sue and severe penalties for intentional violation of any injunction issued under the chapter.

It is to be noted, however, that the definition of discrimination in the Waxman act is so narrow that courts will be restricted in applying the law to a given fact situation.[100] In addition, in order to recover damages from a third party creditor, an injured woman must: (1) prove willful violation of the law; (2) suffer damages as a proximate result of such willful denial of credit; and (3) be prepared to refute a defense that "other relevant factors" resulted in denial of credit.[101] There is no specific remedy under existing law for the married woman who commingles her earnings or separate property or for the married woman without earnings or separate property; this reduces the practical effect of equal management and control under the Dymally law.

These defects are remedied by A.B. 181, which prohibits denying credit to any woman, regardless of her marital status, and prohibits offering credit to any woman on less favorable terms than those offered to a man seeking the same type of credit and managing and controlling the same amount of earnings and other property.

The credit picture, however, is brightening for women as a result of the new legislation and new societal pressures. Effective action by women's groups and dedicated legislators has caused

97. Cal. A.B. 181 (Reg. Sess., pending 1975).
98. CAL. CIV. CODE § 1812.30 (West Supp. 1975).
99. *Id.*
100. *Id.* This code section provides that no married or single woman shall be denied credit if a married or single man "possessing the same amount of property or earnings would receive credit."
101. CAL. CIV. CODE § 1812.31 (West Supp. 1975).

significant policy changes.[102] In light of the new laws and changing societal attitudes, a lender who fails to recognize the importance of women to the success of commercial transactions in general may be committing economic and legal suicide. Women have not taken advantage of their pre-existing rights with regard to credit transactions. Armed with the new legislation, they can successfully challenge unlawful credit practices. Women have changed, the statutes have been and are changing, and it is to be expected that the credit-worthy women will be afforded equality of rights in fact and at law.

Prior to the 1972 Amendments, all debts of the Washington husband were presumed community debts;[103] since he was manager of the community property, he was presumed to act for the community.[104] The wife, lacking management power, did not create community liability for her post-nuptial debts[105] for non-necessaries. Since 1972, when she acquired managerial authority equal to that of her husband, the Washington wife can create community debts. Post-nuptial debts incurred by either spouse are presumptively community debts. Each spouse is also separately liable for his/her acts which produce community liability; neither spouse is separately liable for the acts of the other which produce separate and community liability.[106] The result reached in California is the same as that reached in Washington, even though California does not accept the community debt doctrine.[107]

Real Property Transactions

The general statutory presumption underlying the community property system in California is that all real property situated in California and all personal property wherever situated, acquired during marriage by a married person domiciled in California, is

102. Office of Senator Mervyn Dymally, Press Release, Oct. 2, 1973, stating that the Dymally Amendments were the result of three years of intensive effort with participation by every major women's group in California.

103. Malotte v. Gorton, 75 Wash. 2d 306, 450 P.2d 820 (1969); Fies v. Storey, 37 Wash. 2d 105, 221 P.2d 1031 (1950); Bryant v. Stetson and Post Mill Co., 13 Wash. 692, 43 P. 931 (1896).

104. Fies v. Storey, 37 Wash. 2d 105, 221 P.2d 1031 (1950). Prior to the Dymally Amendments, California in contrast did not accept the community debt doctrine. Grolemund v. Cafferata, 17 Cal. 2d 679, 688, 111 P.2d 641 (1941). The Dymally Amendments by granting equality of management and control, undercut the rationale for rejecting the community debt doctrine.

105. Streck v. Taylor, 173 Wash. 367, 23 P.2d 415 (1933).

106. Cross, *supra* note 53, at 548-50.

107. CAL. CIV. CODE §§ 5116, 5121, 5122 (West Supp. 1975).

community property.[108] Therefore, if a married couple acquires an apartment house and the husband's name alone appears on the title instrument, the general presumption operates despite the instrument, and the property is presumed to belong to the community. The husband and wife hold the property in present, existing, and equal shares. If the husband contests the characterization of the property as community property and wishes to prove that it is his separate property, he must bear the burden of producing clear and satisfactory evidence of the separate character of the property.[109] This general presumption of community property is retained and enlarged by the Dymally Amendments.

Prior to the effective date of the Dymally Amendments, the general community property presumption was inapplicable where real property was transferred by an instrument in writing to a married woman. Property transferred in this manner was presumed to be the separate property of the married woman unless a different intention was expressed in the instrument itself.[110] Assume, for example, that a married woman purchased an acre of woodland and her name alone appeared on the deed. In such a case, the general presumption of community property did not apply. Instead, the land was presumed to be her separate property and her husband was considered to have no interest therein. In this situation, the married woman had no burden of proving the separate status of her property. Thus, property in the name of one spouse alone was characterized differently depending upon whether the property was in the name of the husband or in the name of the wife. In sum, these pre-Dymally presumptions favored the married woman and discriminated against the married man.

Subsequent to the effective date of the Dymally Amendments, property acquired by a married woman by an instrument in writing is presumed to be her separate property only if it was acquired before January 1, 1975.[111]

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108. CAL. CIV. CODE § 5110 (West Supp. 1975). *See* Wilson v. Wilson, 76 Cal. App. 2d 119, 172 P.2d 568 (1946).

109. Estate of Nickols, 164 Cal. 368, 371, 129 P. 278, 279 (1912). *See also* See v. See, 64 Cal. 2d 778, 783, 51 Cal. Rptr. 888, 892 (1966); Latterner v. Latterner, 121 Cal. App. 298, 8 P.2d 879 (1932).

110. CAL. CIV. CODE § 5110 (West 1970), *as amended*, CAL. CIV. CODE § 5110 (West Supp. 1975). *See* Donze v. Donze, 88 Cal. App. 769, 264 P. 294 (1928).

111. CAL. CIV. CODE § 5110 (West Supp. 1975), *amending* CAL. CIV. CODE § 5110 (West 1970).

Property acquired on or after January 1, 1975 now falls within the general statutory presumption of community ownership. The practical effect of this change in presumption is the shifting of the burden of proof with respect to the wife's separate property. Thus the Dymally Amendments require that in order for a married woman to assert that property acquired by an instrument in writing in her name alone, on or after January 1, 1975, is her separate property, she must meet the same evidentiary showing and sustain the same burden of proof previously only required of the married man.[112] The Dymally Amendments therefore deprive the married woman of the comfort and benefit of the protective presumption that previously operated to benefit her and discriminate against her husband.

Prior to the effective date of the Dymally Amendments the general presumption of community property was also inapplicable in a situation where property was transferred to a married woman and "any other person."[113] Unless a contrary intention was expressed, a married woman presumptively took her share as a tenant in common with the other person, even if that other person was her husband, provided the spousal relationship was not mentioned on the face of the instrument.[114] If the other person was her husband, he held his share of the tenancy in common for the benefit of the community and therefore was required to share his portion with his wife, who held her share as her separate property. In this situation three-fourths of the property belonged to the married woman whereas only one-fourth belonged to the married man.

This rule resulted in discrimination that consisted of not only unequal ownership but also of unequal legal burdens. If the married man contended that his share of the tenancy in common was his separate property, he was required to rebut the general community property presumption; the married woman, on the other hand, had a favorable presumption permitting her to avoid the necessity of making any evidentiary showing whatsoever.

Under the Dymally Amendments, property acquired by a

112. Angelia, *Equality at Death—Fact or Fiction?*, in THE 27TH ANNUAL TAX & PROBATE FORUM (1974); H. VERRALL, *supra* note 11, at 119.
113. CAL. CIV. CODE § 5110 (West 1970) *as amended* CAL. CIV. CODE § 5110 (West 1970).
114. Dunn v. Mullan, 211 Cal. 583, 296 P. 604 (1931); Cal. Stat. 1935, ch. 707, § 1.

married woman and any other person before January 1, 1975 in the form of a tenancy in common presumptively remains the wife's separate property. Although the Amendments are silent on this point, it is reasonable to infer that all property acquired on or after this date falls within the general presumption of community property. The Amendments eliminate the presumption favoring the married woman and, in so doing, eliminate the discrimination that operated against the married man. For example, if a married couple purchases a cottage, and both of their names appear on the deed, but it makes no reference to or description of their relationship as husband and wife, and the property is acquired after January 1, 1975, the property falls under the general presumption of community property. The wife holds a one-half interest as compared with her pre-Dymally three-fourths interest, and the husband has the same one-half interest. With respect to property acquired after the effective date of the amendments, the unequal treatment of married women and men is eliminated.

When husband and wife take title as joint tenants, as is commonly done in California, courts apply the general community property presumption for the limited purpose of dividing the property upon the dissolution of the marriage or the legal separation of the spouses; in all other situations the joint tenancy status is respected. The Dymally Amendments leave unaltered this unique treatment of the single family residence held in joint tenancy.[115]

Prior to the effective date of the Dymally Amendments, the husband had the right to manage and control the community real property.[116] This right, however, was somewhat restricted. Whenever community real property was leased for longer than one year, sold, conveyed, or encumbered, the wife was required to join in the execution of the conveyance.[117]

Although the pre-Dymally law gave the wife no right to manage and control the community real property, it did provide remedies for her in the event that her husband breached the joint conveyancing requirement. These remedies, however, were limited in several ways. First, if the husband transfered for value community real property which was recorded in his name alone, the

115. CAL. CIV. CODE § 5110 (West 1970), *as amended* CAL. CIV. CODE § 5110 (West Supp. 1975).
116. CAL. CIV. CODE § 5127 (West 1970), *as amended* CAL. CIV. CODE § 5127 (West Supp. 1975).
117. *Id.*

transfer, although it violated the statute, was merely voidable rather than void.[118] Second, the wife had only one year to file an action to set aside the transfer. The one year statute of limitations began to run from the date of recordation even if she was unaware of the fact that her husband owned the property or was unaware of the fact that he had conveyed it without her permission.[119] Third, there was a rebuttable presumption that a transfer was valid if it was made to a good faith purchaser without knowledge of the marriage relationship.[120] Fourth, even if the wife succeeded in rebutting the presumption in favor of the good faith purchaser, she was entitled to set aside the instrument only if she restored to the innocent purchaser the consideration paid.[121] This requirement severely limited the protection afforded by the remedy. Finally, the wife could be estopped by her conduct to set aside a conveyance made by her husband without her joinder.[122]

The Dymally Amendments leave unchanged the requirement that "both spouses must join in executing any instrument" which leases for longer than one year, sells, or conveys such real property interests. Although the remedy previously only afforded the wife is extended by the Dymally Amendments to both spouses, the remedy retains the same weaknesses discussed above. The one year statue of limitations commences running on the date the instrument is filed for recordation. Thus, if the injured spouse, whether it be husband or wife, discovers the transfer after the expiration of the one year, the remedy is useless. The presumption in favor of the good faith purchaser without knowledge of the marriage relationship also is unchanged. It is at this time unclear whether the courts will require the spouse attempting to set aside the unlawful transfer to restore the consideration paid by the innocent purchaser before permitting the transfer to be set aside. It is, however, reasonable to assume that the court will, in the spirit of the Dymally Amendments, treat the injured husband equally with the injured wife. It is also reasonable to assume that the limitation imposed by the doctrine of estoppel will be retained by the courts and extended to prevent an injured spouse, whether it be husband or wife, from setting aside a transfer if the result would be inequitable.

118. *Id.*
119. *Id.*
120. Mark v. Title Guarantee & Trust Co., 122 Cal. App. 301, 9 P.2d 839 (1932).
121. *Id.*
122. MacKay v. Darusmont, 46 Cal. App. 2d 21, 115 P.2d 379 (1971).

Prior to the Dymally Amendments, the wife had little or no redress if her husband was an improvident manager of the community property.[123] She could attempt to enjoin her husband on the theory that he was the trustee of the community with the resulting duties of a fiduciary, and that his actions amounted to a breach of his fiduciary duties.[124] If she pursued such an attack, she bore the heavy burden of proving that her husband's management amounted to an actual breach of his fiduciary relationship with her.[125] She also had limited redress if her husband wasted the community assets, however, this redress was after the fact.[126] If her husband breached the joint conveyancing requirement, she could attempt the above mentioned limited remedy of setting aside the conveyance. And finally, she could divorce her husband, although this provided no recourse unless she could prove that her husband was guilty of "willful misappropriation." In the absence of such a showing, the court would disregard any improvident management by the husband, and merely determine the net value of the community property and divide it equally between the spouses. Thus, under pre-Dymally law, the husband with his exclusive power to manage and control over the community property could exhaust the community property in ways over which the wife had little or no control, providing that his actions did not amount to "willful misappropriation."

Because the Dymally Amendments grant the wife the right to share equally in the everyday management and control of the community real property, she is no longer subject to her husband's improvident actions as sole manager of the community property. Similarly, she is no longer limited to the above after-the-fact remedies. Rather, she now has authority to initiate decisions, share responsibilities, and exert her rights before they are infringed.

She continues to have the right to set aside transfers of real property of the community in violation of the joint conveyancing rule; now, however, such transactions are void, rather than merely voidable. Unlike before, where she and her husband acquire community real property without designation as husband and wife on

123. Grant, *supra* note 45, at 251-53.
124. Vai v. Bank of America, 56 Cal. 2d 329, 337, 364 P.2d 247, 252 (1971); Fields v. Michael, 91 Cal. App. 2d 443, 448-49, 205 P.2d 402, 405-06 (1949); Mahl v. E.A. Portal Co., 81 Cal. App. 494, 497-98, 254 P. 278, 279 (1927).
125. Mitchell, *Equal Rights and Equal Protection: Who Has Management and Control?*, 46 S. CAL. L. REV. 892, 897 (1973).
126. Grant, *supra* note 45, at 255-56.

the instrument, she now holds her share of the property for the community; this brings her share in conformity with her husband's previous and present holding of his share for the benefit of the community. She now bears the same evidentiary burden as her husband with respect to real property in one partner's name alone. As discussed above, the California wife now bears the burdens with respect to community property which are balanced with the newly-won rights to manage and control such property.

Prior to 1972, the Washington husband could acquire encumbered real property without the concurrence of his wife,[127] although she was required to have some knowledge of the transaction;[128] acting alone, he could enter into a purchase contract for unencumbered real property[129] and bind the community as along as his wife manifested some slight assent.

Since the 1972 reforms in Washington, joinder of husband and wife is required for all community real property transactions. Both spouses must join in the purchase of real property if it is to be community property. Neither spouse alone is allowed to sell, convey or encumber real property without the joinder of the other spouse.[130]

Prior to the 1972 amendments, California differed from Washington in that California's presumptions favored the wife. Also, California law did not distinguish between the husband's power to purchase encumbered or unencumbered property. As in Washington, the California wife was required to join in certain real property transactions. As a result of the Dymally Amendments in California and the 1972 amendments in Washington, the requirement of joinder is similar in the two states. Whether the joinder requirement will significantly affect land acquisitions in Washington is still unclear.[131]

127. Morgan v. Firestone Tire & Rubber Co., 68 Idaho 506, 201 P.2d 976 (1948).
128. Campbell v. Webber, 29 Wash. 2d 516, 188 P.2d 130 (1947); Hargrave v. City of Colfax, 89 Wash. 467, 154 P. 824 (1916).
129. Stephens v. Nelson, 37 Wash. 2d 28, 221 P.2d 520 (1950); Baker v. Murray, 78 Wash. 241, 138 P. 890 (1914).
130. WASH. REV. CODE § 26.16.030 (Supp. 1973).
131. Cross, *1972 Amendments to the Washington Community Property Law*, 10 WASH. ST. B. NEWS 9 (1972).