

CALIFORNIA SUPREME COURT TO RULE ON KEY REAL ESTATE ISSUE

LEGAL ALERT

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The California Supreme Court is set to provide guidance on an issue that could have far-reaching implications for real estate, bankruptcy, and divorce.

Interestingly, this situation is arising via a bankruptcy case, not a family law case. In the 9th Circuit Court of Appeals bankruptcy case, *In Re Brace* (No.17-60032) the 9th Circuit has sought guidance from the Supreme Court of California in considering the following situation:

- a husband and wife acquired property jointly from a third party as joint tenants;
- the husband, alone, initiated a voluntary Chapter 7 Bankruptcy case;
- the bankruptcy trustee sought to include wife's (non-debtor's) interest in the bankruptcy estate.

The question at hand is: can the creditors (to whom the bankrupt husband is indebted) include the wife's one-half interest in the bankruptcy proceedings, or is the wife's interest protected because the property is titled as joint tenants (rather than community property)?

The California Supreme Court will address conflicting points of California Law:

- The manner in which legal title is held is presumed correct and, when held in joint tenancy, only the debtor's one-half joint interest in property becomes part of the bankruptcy estate, or
- Property acquired during marriage is presumptively community property owned equally by the married couple and thus included in the bankruptcy estate

The following important questions may be answered in the Court's decision:

- Can a purchaser rely on the form of title as conclusive when purchasing a property from the spouses or must they infer community ownership?
- What benefits and protections will apply to different forms of title?
- For parties intending to change the property ownership from community property to separate property, what standards apply beyond mere titling?

Stay tuned for our analysis of the Court's decisions and its implications on your practice.

Despite COVID-19 related limitations, Hoge Fenton continues to meet new clients and advocate on their behalf. In addition to being highly skilled, Certified Specialists in Family Law, our family law attorneys are integrated with our attorneys in other practice areas. This provides several financial and emotional benefits for our clients, such as:

- **Minimizing your taxes:** our attorneys communicate closely with each other to minimize the tax implications of division of property, business, and other assets
- **Crafting a new estate plan for your new situation:** we can revoke an existing estate plan and work with our estate planning counsel to implement a new estate plan that is optimized to your situation
- **Protecting your business interests:** we structure transactions, distribute business interests (including IP), and assess ongoing litigation
- **Maximizing your real estate outcome:** we work through division and sale of real and commercial property during dissolution to assess benefits and pitfalls such as capital gain impacts

Dealing with domestic violence can be difficult, both emotionally and legally. Please reach out to our experienced Family Law attorneys if you need support.



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