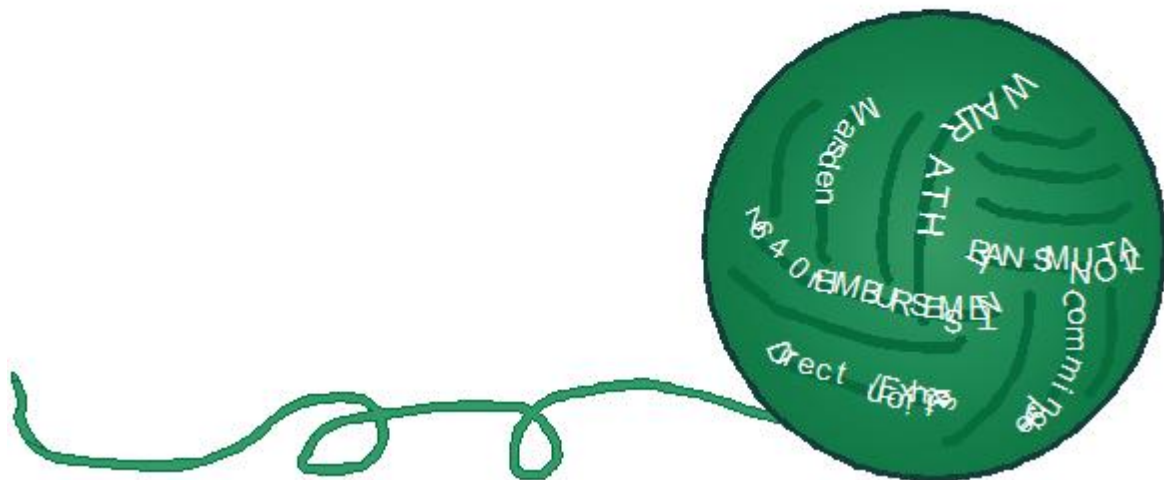


Tracing & Reimbursements

Unraveling the Ball of Confusion



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By Pamela Wax-Semus

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TRACING AND REIMBURSEMENTS...UNRAVELING THE BALL OF CONFUSION

INTRODUCTION

Tracing, as used in Family Law matters, is an accounting methodology used to determine the separate or community property interest in assets that are acquired during marriage. This methodology enables a spouse to recover separate funds either through confirmation of an asset as separate property, apportionment or reimbursement. Tracing can also be used to rebut the opposing spouse's separate property contentions, or used to determine the amount of community property used to reduce the principal balance of a mortgage on a spouse's separate property. It can also be used to determine community expenditures for improvements made on one spouse's separate property. Until 2002, said community expenditures were presumed to be a gift as long the husband/wife had knowledge of said expenditures. Where property is presumed to be community, tracing is the methodology used to satisfy a party's burden of proof. Without tracing, a spouse seeking to prove the characterization of an asset acquired as separate will be unlikely to meet the burden of proof. This article provides an overview of the laws governing tracing and/or reimbursements with suggestions on how to deal with a variety of tracing situations.



USING TRACING TO OVERCOME THE PRESUMPTION THAT PROPERTY ACQUIRED DURING MARRIAGE IS COMMUNITY PROPERTY

A common tracing problem involves an attempt to overcome the basic statutory presumption that all property acquired during marriage is community property. FC § 760. This presumption may be overcome by tracing such property to a separate property source.

In tracing an asset to a separate property source, it is often necessary to retain the services of a forensic accountant with experience in tracing matters. Forensic accountants utilize bank statements, canceled checks, security statements, financial records, deeds, loan documents, credit applications, probate and all other forms of documentary evidence to overcome the community property presumption.

When spouses purchase assets during marriage with funds from a bank account, forensic accountants use the records provided to reconstruct the activity during the tracing period. When spouses continue to sell and reinvest separate funds in real estate transactions throughout the marriage, a forensic accountant trained in tracing methodologies can be used to establish the flow of separate property funds from one transaction to another. Forensic accountants are able to analyze virtually any asset or obligation on a balance sheet in order to determine its separate property source.

TRACING TO DETERMINE SEPARATE CHARACTER OF FUNDS IN A COMMINGLED ACCOUNT

A commingled account is typically a bank or brokerage account into which, during marriage, both separate and community funds have been deposited. Property purchased with funds from a commingled account during marriage is presumptively community because of the general presumption under FC § 760; however, the appellate cases on the subject suggest that the commingling of separate funds with community funds in a bank account does not destroy the character of the separate funds if their separate nature can be ascertained. *Marriage of Hicks* (1962) 211 Cal. App. 2d 144, 27 Cal. Rptr. 307. The spouse asserting her (his) separate property interest in a commingled account, or, as is more typical, property purchased with funds from that account, has the burden of proving that the funds used from the commingled account were her (his) separate property. This proof is established by researching the chronology of transactions within the account, which will show the existence of separate funds at the time the property was acquired. Appellate courts recognize two methods of establishing that the funds in a commingled account are separate: “Direct Tracing” and “Exhaustion Method (or family expense) Tracing.”

A. Direct Tracing

Direct tracing of a commingled account requires that the asserting spouse establish two factors: 1) that separate funds sufficient to cover the amount withdrawn to purchase the asset in question were on deposit in the commingled account at the date of the withdrawal; and 2) that, at the time of acquisition, she (he) intended that separate funds be used for the purchase.

The use of direct tracing requires that adequate records be available. The burden of adequate record keeping rests with the party seeking the separate characterization. *Marriage of Frick* (1986) 181 Cal. App. 3d 997, 226 Cal. Rptr. 766.

Evidence of the intent to use separate funds to acquire separate property is essential in overcoming the community property presumption. Inadequate tracing may be overcome by a strong showing of intent. In *Marriage of Mix*, (1975) 14 Cal.3d 604, 122 Cal. Rptr. 79, 536 P.2d 479, despite providing inadequate documentary evidence, it was used in conjunction with a strong showing of intent, which was used to successfully rebut the community presumption:

We agree that the schedule by itself is wholly inadequate to meet the test prescribed by Hicks v. Hicks..., and to support the trial court's finding that Esther "identified and traced" the separate property. However, the schedule was not the only evidence introduced by Esther to effect the tracing. She personally testified that the schedule was a true and accurate record, that it accurately reflected the receipts and expenditures as accomplished through various bank accounts, although she could not in all instances correlate the items of the schedule with a particular bank account, and that it accurately corroborated her intention throughout her marriage to make these expenditures for separate property purposes, notwithstanding her use of the balance of her separate property receipts for family expenses. *Id.*



How title to property is held may be indicative of intent and will affect the burden of proof. Property acquired in the name of one spouse alone will provide a significant advantage to the separate property position, in concert with adequate tracing evidence. If title to property is in the form of joint tenants prior to January 1, 1984, an understanding or agreement (written, oral, or implied), between the parties that the property would be separate is required to overcome the general community presumption. *Marriage of Lucas* (1980) 27 Cal.3d 808, 166 Cal. Rptr 853, 614 P.2d 285. On or after January 1, 1984, FC § 2640 limits the separate property interest to a claim for reimbursement.

A review of documentation may provide evidence supporting the client's contention that her (his) intent was to purchase the asset with separate funds. Quitclaim deeds, loan applications, and escrow instructions are some examples of the types of documentary evidence that may be useful in this regard. Consideration should be given to obtaining the loan approval file and/or the testimony of the loan officer who approved the loan.

The occurrence of large deposits of separate funds (*e.g.* transfers from savings to checking) within a few days of an acquisition, improvement, etc., may add to the argument that the party intended to use separate funds for the acquisition of separate

property. The longer the time between a deposit and the acquisition, the less persuasive is the tracing evidence.

In most cases, however, the documentation is usually devoid of any clear indicia of intent. Hence, the resolution of the intent issue is often determined by the parties' testimony and/or the testimony of other witnesses. Contrast *Mix, supra*, with the result in *Estate of Murphy*, (1976) 15 Cal. 3d 907, 126 Cal. Rptr. 820, 544 P.2d 956, where the court held that the legatees were unable to overcome the community presumption because the decedent failed to keep adequate records. The distinction between the cases appears to be that Mrs. Mix was able to testify in support of her position. The legatees in *Estate of Murphy* were not able to present similar testimony.

B. Exhaustion Method (Family Expense) Tracing

In *See v. See*, (1966) 64 Cal. 2nd 778, 51 Cal. Rptr. 888, 415 P.2d 776, the court described an alternative to the direct tracing method. The following excerpts from the opinion explain the methodology.

He may trace the source of the property to his separate funds and overcome the presumption with evidence that community expenses exceeded community income at the time of acquisition. If he proves that at that time all community income was exhausted by family expenses, he establishes that property was purchased with separate funds... Only when, through no fault of the husband, it is not possible to ascertain the balance of income and expenditures at the time property was acquired, can recapitulation of the total community expenses and income throughout the marriage be used to establish the character of the property.

A spouse who commingles the property of the community with her (his) separate property, but fails to keep adequate records cannot hide behind the "burden of record keeping" as a justification for preparing a summary recapitulation of income and expenses at the date of separation that disregards any acquisitions made during the marriage with community funds. If the asserting spouse cannot adequately trace the funds used for acquisitions during marriage to a separate property source and cannot establish that there was a negative community account balance when the assets were purchased, the controlling presumption is that property acquired by purchase during marriage is community property. Once commingling takes place, the asserting spouse assumes the burden of keeping records adequate to establish the balance of community income and expenditures at the time an asset is acquired with commingled property.

The tracing methodology used in *See v. See*, supra, goes by many names; it has been called "recapitulation", "family expense tracing", "the family living expense presumption", "the exhaustion method" and "family expense recapitulation". Under this method, the separate character of an asset may be established by recapping the separate income, the community income, and the family expenses throughout the marriage. The purpose of this analysis is to show that family living expenses exhausted community income on an annual basis, leaving only separate funds in the account from which to acquire the property in question. The recapitulation method is founded on the assumption that family or living expenses are presumptively paid with community funds. *Beam v. Bank of America* (1971) 6 Cal. 3d 12, 98 Cal. Rptr. 137, 490 P.2d 257.

The tracing benchmark has increased since *See v. See* was decided. To rebut the community presumption one must prepare a complete tracing identifying and characterizing every transaction in an account before the date of acquisition. This will support a conclusion that community expenses exhausted community funds, thereby leaving only separate funds in the account. This tracing may adequately meet the burden, assuming requisite evidence of intent to acquire property as separate property is provided. The ideal situation requires sufficient record keeping. In the real world, most people simply do not keep good records.



Marriage of Higinbotham, (1988) 203 Cal. App.3d 322, 249 Cal. Rptr. 798, illustrates how the inadequacy of record keeping was fatal to a party attempting to establish a separate interest. In *Higinbotham*, a rental property purchased by husband prior to marriage appeared (from the parties' joint tax returns) to have a positive cash flow during the marriage. Inferentially, the positive cash flow suggested that the rents received from the property funded the trust deed payments on the property. Mrs. Higinbotham claimed a community interest under a *Moore/Marsden* theory. *Marriage of Moore* (1980) 28 Cal. 3d 366, 168 Cal. Rptr. 662, 618 P.2d 208; *Marriage of Marsden* (1982) 130 Cal. App. 3d 426, 181 Cal. Rptr. 910; see discussion of *Moore/Marsden* approach, infra. Mr. Higinbotham could not provide the court with a better tracing because he intentionally destroyed the relevant bank statements and canceled checks three months before the parties separated. Under these circumstances, the court held that husband had not met his burden of overcoming the community presumption regarding the trust deed payments. Although the tax return evidence provided by Mr. Higinbotham indicated that separate funds were available, Mr. Higinbotham failed to show how these funds were used. Arguably, if the court had not found Mr. Higinbotham to blame for the destruction of the records,

the recapitulation from the tax returns might have been sufficient proof that separate income was used to make the trust deed payments on the property. The following excerpt from the Higinbotham opinion follows the reasoning found in *See v See, supra*:

Furthermore, the recapitulation method may be employed only when through no fault of the spouse asserting a separate property interest, it is impossible to ascertain the balance of income and expenditures at the time the property was acquired.



The importance of adequate record keeping in tracing a separate property interest is further demonstrated in *Marriage of Braud* (1996) 45 Cal. App. 4th 797, 53 Cal. Rptr. 2d 179. In *Braud*, the court found that there was insufficient evidence to support the husband's claim that he had contributed \$10,000 of his separate property toward remodeling the community property residence. Specifically, Mr. Braud had provided no proof of the amounts spent on labor or materials, no proof of the balance in the commingled joint bank account where the \$10,000 had been deposited before remodeling began, and no proof of the total community property income on deposit or amounts withdrawn from the joint account to cover family expenses during the remodeling. By contrast, the court found that Mr. Braud had adequately traced his separate property interest in \$25,000 withdrawn from a separate account that had been converted to a joint account by providing bank records detailing the various deposits into and payments made from said account.

A spouse who elects to use her (his) separate property instead of community property to pay community living expenses cannot claim reimbursement. Since either spouse can deplete the community funds by establishing an extravagant lifestyle, neither party should be able to subsequently claim a right to reimbursement from community funds. In the absence of an agreement to the contrary, the use of separate property by a spouse for community living expenses is deemed a gift to the community. *See v. See, supra*.

The practical application of this doctrine is to deprive the "asserting spouse" from building up "credits" in a commingled bank account in an attempt to exhaust community income at a later date. If the community intended to borrow funds from separate property funds, a written agreement to that effect can establish a valid loan from the separate estate to the community. If no such agreement exists, the use of the separate funds is deemed a gift.

C. Borrowed Money

Determining the character of borrowed money is often key to a proper tracing analysis. Whether the funds borrowed are community or separate hinges on the issue of "lenders intent". To overcome the presumption that money borrowed during the marriage is community, it must be shown that the lender relied on the separate credit, property, and income of the party attempting to establish a separate claim. *Marriage of Gudelj* (1953) 41 Cal. 2d 202, 259 P.2d 656; *Marriage of Grinius* (1985) 166 Cal. App.3d 1179, 212 Cal. Rptr. 803. Although a detailed discussion of this issue is beyond the scope of this article, it is important to recognize this problem area.



D. Proper Standard of Proof to Overcome Presumption that Property Acquired during Marriage is Community Property

Pursuant to *Marriage of Ettefagh* (2007) 150 Cal.App.4th 1578, 59 Cal.Rptr.3d 410, since the case law was inconclusive and the nature of the parties' interests at risk in the dispute were purely economic, Court of Appeal concluded that the trial court correctly determine that the standard of proof to overcome presumption that property acquired during marriage is community property should be preponderance of evidence standard.

In a lengthy discussion of the proper standard of proof, Court of Appeal noted there was no constitutional, statutory or decisional law requiring a higher standard of proof. FC § 760 is a rebuttable presumption affecting burden of proof.

Preponderance of evidence is the default standard of proof. EC § 115 states that that "[e]xcept as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence." The word "law" includes constitutional, statutory, and decisional law. Since no statute requires a higher standard of proof, in *Ettefagh* the Wife relied on decisional law, which Court of Appeal agreed was inconsistent and confusing. Among the cases on which Wife relied were: *Estate of Niccolls* (1912) 164 Cal. 368, 371; *Estate of Nickson* (1921) 187 Cal. 603; *Gagan v. Gouyd* (1999) 73 Cal.App.4th 835, and *Thomasset v. Thomasset* (1953) 122 Cal.App.2d 116.

Court of Appeal analyzed each and found the holdings were either dicta or ambiguous. It looked to other cases which held that the proper standard of proof was preponderance of evidence, including: *In re Marriage of Fabian* (1986) 41 Cal.3d 440, 446, ["To overcome the community property presumption the spouse asserting a

separate property interest must establish by a preponderance of the evidence that the parties had a contrary agreement..."; In re *Marriage of Haines* (1995) 33 Cal.App.4th 277, 290, ["The burden of proof for the party contesting community property status is by a preponderance of the evidence."]; and In re *Marriage of Aufmuth* (1979) 89 Cal.App.3d 446, 455 ["This presumption is rebuttable [citation], and it may be overcome by a preponderance of the evidence."].

Finding no clear answer in statutory or case law, the Court of Appeal performed its own analysis based upon the societal interest involved and found no policy requiring the higher standard of proof:

"No evident societal interest would seem to favor either provision, and the effect of these two statutes has been stated as a single rule: 'Generally, property acquired during marriage by either spouse, other than by gift or inheritance, is community property.' [Citation.] A determination of how the property in question was acquired—by gift or by purchase with community funds—affects only the classification of the property as either separate or community. [Citation.] The interests of husband and wife in community property are 'present, existing, and equal' [FC § 751], but neither spouse, ordinarily, has any interest in the ••separate•• property of the other [FC § 752]." (*Marriage of Ettefagh, supra*, 150 Cal.App.4th at p. 1590.)

OTHER TRACING APPLICATIONS IN MARITAL DISSOLUTION

A. Tracing to Obtain FC § 2640 Reimbursement (Effective for Acquisition of Community Property Occurring on or After January 1, 1984, with Commentary Regarding Current Case Law on Pre January 1, 1984 Acquisitions)

1. Tracing Right of Reimbursement Where Property is Presumed to be Community under FC § 760 and FC § 2581.

There is a potential tracing right of reimbursement when separate property is used to acquire property presumed to be community property. As discussed above, the most basic community property presumption is found in FC § 760, which states:

Except as otherwise provided by statute, all property, real or personal, wherever situated, acquired by a married person during marriage while domiciled in [California] is community property.

An additional community property presumption is created under FC § 2581, which provides that for purposes of property division in dissolution of marriage or legal separation proceedings commencing on or after January 1, 1984, property acquired by the parties during marriage in joint form (i.e., tenancy in common, joint tenancy, tenancy by the entirety, or community property) is community property. FC § 2581. Furthermore, FC § 2581 applies to property initially acquired before marriage and converted into joint title during marriage, regardless of the reason (e.g., the demands of a lending institution as a condition for a refinancing). *Marriage of Rico* (1992) 10 Cal. App. 4th 706, 710, 12 Cal. Rptr. 2d 659, 661. Moreover, if during marriage the parties only acquire joint equitable title (e.g. under a real property purchase contract specifying that joint title will be taken where legal title has not yet passed) the community property presumption applies. *Marriage of Tucker* (1983) 141 Cal. App. 3d 128, 135, 190 Cal. Rptr. 127, 132. The FC § 2581 joint title presumption may be rebutted only through 1) “a clear statement in the deed or other documentary evidence of title by which the property is acquired that the property is separate property and not community property;” or 2) “[p]roof that the parties have made a written agreement that the property is separate property.”

FC § 2640 (enacted as companion legislation to FC § 2581) enables a spouse who cannot meet the burden of rebutting the community property presumption under FC § 760 or 2581, but who can nonetheless trace to a separate property source, to obtain reimbursement for his or her separate property "contributions to the acquisition of community property (or, per §2640 (c), to the acquisition of property of the other spouse's separate estate)." Reimbursable separate property "contributions to the acquisition of property" are defined by FC § 2640 to:

... include down payments, payments for improvements, and payments that reduce the principal of a loan used to finance the purchase or improvement of the property but do not include payments of interest on the loan or payments made for maintenance, insurance, or taxation of the property.

Tracing to a separate property source is the sole method by which a party can establish a right of reimbursement under FC § 2640. FC § 2640(b) specifically states:

... the party shall be reimbursed for the party's contributions to the acquisition of the property to the extent the party traces the contributions to a separate property source.

For example, if contributions during marriage to the acquisition of community property are traced to a commingled account into which substantial separate property was deposited, a claim for reimbursement under FC § 2640 may exist. Likewise, there

is a potential tracing right of reimbursement when a spouse's separate property is transmuted to community property (or joint title property that is presumptively community property under FC § 2581) during marriage. *Marriage of Perkal* (1988) 203 Cal. App. 3d 1198, 1201 – 1202, 250 Cal. Rptr. 296, 297–298; *Marriage of Witt* (1987) 197 Cal. App. 3d 103, 108, 242 Cal. Rptr. 646, 649.

FC § 2640 reimbursement requires no evidence of the contributor's intent. A spouse's right to reimbursement under FC § 2640 is absolute, "unless a party has made a written waiver of the right to reimbursement or has signed a writing that has the effect of a waiver." FC § 2640(b). FC § 2640 creates an actual property right of reimbursement to the contributing spouse, rather than a mere presumption that the contributing spouse did not make a gift to the community, rebuttable by proof of the contributor's donative intent. *Marriage of Fabian, supra*, 41 Cal. 3d 440, 444, 224 Cal. Rptr. 333, 335.

2. Measure of FC § 2640 Reimbursement

In general, the amount of reimbursement under FC § 2640 is measured by the value of the separate property contributions at the time they were made. FC § 2640(b). The reimbursable amount does not bear interest and is "without adjustment for change in monetary values." FC § 2640.



Where separate property that is converted into husband and wife joint title property during marriage becomes presumptively community property under FC § 2581, the reimbursable contribution is the fair value of the property at the time of its conversion to joint form. *Marriage of Rico, supra*, 10 Cal. App. 4th at 710, 12 Cal. Rptr. 2d at 661. However, the reimbursable "fair value" must be the contributing spouse's net equity in the property at the time of the conversion. *Marriage of Benart* (1984) 160 Cal. App. 3d 183, 189, 206 Cal. Rptr. 495, 498 (disapproved on other grounds in *Marriage of Buol* (1985) 39 Cal. 3d 751, 763, 218 Cal. Rptr. 31, 39, fn 10; and in *Marriage of Fabian, supra*, 41 Cal. 3d at 444, 224 Cal. Rptr. at 335).

In the case of a mortgaged home converted to joint title during marriage, the separate property reimbursement measure is the fair market value of the home at the time of conversion, less outstanding encumbrances and any community property contributions to principal before conversion. The actual calculation is made pursuant to the "the *Moore/Marsden* rule", discussed *infra*, to determine the community vs. reimbursable separate property equity interests in the home. *Marriage of Perkal, supra*, 203 Cal. App. 3d 1198, 1202, 250 Cal. Rptr. at 297–298 & fn. 4. The same approach applies where both parties had a separate property interest in the home

before conversion—i.e. each party’s respective reimbursement right is measured by the *Moore/Marsden* rule. *Marriage of Rico*, supra, 10 Cal. App. 4th at 710, 12 Cal. Rptr. 2d at 661.

F.C. §2640 applies to the use of separate property to improve community property during marriage. The amount of reimbursement should be the lesser of either the cost of the improvement or the amount by which the improvement increased the value of the property. *Marriage of McNeill* (1984) 160 Cal.App.3d 548 206 Cal. Rptr.641, disapproved on other grounds, *Marriage of Fabian*, supra 41 Cal.3d 440, 451, fn. 13, 224 Cal. Rptr. 333, 715 P 2d 253.

Although the separate property contributor does not obtain reimbursement for appreciation, he or she does bear the risk of depreciation or deflation: FC § 2640(b) provides that the amount reimbursed “shall not exceed the net value of the property at the time of the division.” Therefore, if the value of the property at the time of division is less than the equity value of the separate property contribution at the time it was made, the maximum reimbursement is the property itself. *Marriage of Witt*, supra, 197 Cal. App. 3d 103, 108–109, 242 Cal. Rptr. 646, 649. If both parties are entitled to reimbursement and the property does not have sufficient value to permit full reimbursement to each of them, reimbursement is to be proportionate to each party’s contribution. See, 83 Sen. J. pp. 4866–4867 (1983 Reg. Sess.)

3. Inapplicability of FC § 2640 to Deferred Sale of Mixed Asset Family Residence.

In *Marriage of Braud*, supra, 45 Cal. App. 4th at 820–821, 53 Cal. Rptr. 2d at 193, the Court held that a strict application of FC § 2640 is inappropriate where an out-spouse contributed separate property to a family home that was made the subject of an FC § 3800 et seq. deferred sale order at dissolution. The Court opined that it would be unfair and inappropriate to tie up the out-spouse’s separate property interest—potentially for many years—without affording him or her an opportunity to benefit from appreciation in the value of that interest during the deferral period. Thus, an out-spouse with a FC § 2640 tracing right of reimbursement is not limited to reimbursement, at the time of the deferred sale, of the separate property contribution toward acquisition of or improvements made to the family home. Rather, the trial court may reconfigure title to the home, recognizing the parties as tenants in common with unequal ownership interests, and order that the ultimate sale proceeds be paid to the parties in proportion to those ownership interests. To reconfigure the ownership interest, it will be necessary for the parties to present evidence at time of trial regarding both the fair market value of the residence and the separate property contributions.

4. Impact of Walrath Supreme Court Decision on Separate Property Reimbursements



In *Marriage of Walrath* (1998) 14 Cal. 4th 907, 72 Cal. Rptr. 2d 856, the California Supreme Court has recently ruled that a FC § 2640 claim can be traced to the proceeds of community property to which separate property was contributed. In other words, FC § 2640 creates a tracing right of reimbursement through more than one property acquisition transaction.

The California Supreme Court's ruling on the issues brought up in *Walrath* have necessitated accountants to refine their tracing methods so as to include new procedures in the determination of separate property contributions to community property assets acquired during marriage. The reimbursement calculations will now have to track the metamorphoses of separate property contributions from one use to another. Questions arise as to the proper method of tracing when the "new" use does not involve the acquisition of property. *Walrath* requires the application of competent tracing techniques and a determination of the equity at the time the asset is refinanced to establish the percentage of separate property reimbursement interest being transferred to the new asset.

5. Retroactivity of FC § 2640 to January 1, 1984

The FC § 2640 right of reimbursement became operative January 1, 1984. As with the FC § 2581 presumption, the Legislature codified its intent that the statute apply in all property division proceedings commencing on or after January 1, 1984 and to "all property held in joint title regardless of the date of acquisition of the property or the date of any agreement affecting the character of the property." FC § 2580(C). Notwithstanding this legislative statement of intent, the California Supreme Court held that the FC § 2640 right of reimbursement cannot constitutionally be applied to pre-1984 acquisitions. *Marriage of Heikes* (1995) 10 Cal. 4th 1211, 1225, 44 Cal. Rptr. 2d 155, 164. Consequently, pre-1984 contributions are governed by the California Supreme Court's decision in *Marriage of Lucas, supra*, 27 Cal. 3d at 816, 166 Cal. Rptr. at 858), pursuant to which a spouse who contributed separate property to a community property acquisition could not thereby obtain an interest in such property or a right to reimbursement, unless the parties had a "common understanding or agreement" to that effect. In other words, tracing cannot overcome the presumption that spouses who spent their own separate property to acquire or improve property for the community prior to January 1, 1984 had made a gift to the community.

6. The Reimbursement for Separate Property Contributions Made to the Other Spouse's Separate Property

Prior to the revision in the law, the court stated that nothing in FC § 2640 gave one spouse a right of reimbursement for separate property contributions made to the other spouse's separate property (*Marriage of Cross*, 94 Cal. App. 4th 1143, 114 Cal. Rptr. 2d 839). The court had reasoned that if the Legislature had intended to give a spouse a right to reimbursement for separate property contributions made to the other's spouse's separate property, the Legislature could have included the appropriate language to achieve this intent. In amending FC § 2640, effective as of January 1, 2005, the legislature did just that. In section (c) of FC § 2640, the law now states that a party shall be reimbursed for the party's separate property contributions to the acquisition of property of the other spouse's separate property estate during the marriage, unless there has been a transmutation in writing or a written waiver of the right to reimbursement. The legislature determined that the amount reimbursed shall be without interest or adjustment for changes in monetary values and may not exceed the net value of the property at the time of the division. Presumably, this statute will not be applied retroactively to contributions made before its operative date. (See *In re Marriage of Fabian* (1986)).

B. Reimbursement Rights Under FC § 900 Et Seq.

Another area of community property law in which evidence derived from tracing may be helpful involves reimbursement rights under the marital property debt liability statutes set forth in FC § 900 et seq. Parties to a dissolution of marriage or legal separation proceeding may obtain reimbursement pursuant to these statutes under the following circumstances:

1. If the nondebtor spouse's separate property is applied to satisfy a debt for the other spouse's "necessaries of life" at a time when the debtor spouse's nonexempt separate property or share of community estate property was available, the nondebtor spouse is entitled to reimbursement to the extent such property of the debtor spouse was available. FC § 914(b).
2. If community estate property is used to satisfy a child or spousal support obligation arising from another marriage at a time when the obligor spouse had nonexempt separate income available, the community is entitled to reimbursement from the obligor spouse in the amount of the available separate income, not exceeding the community estate property so applied. FC § 915(b).

3. The application of community or separate estate property to satisfy a spouse's tort liability (to the extent not covered by insurance) gives rise to a right of reimbursement if, pursuant to FC § 1000(b), the property so used was only secondarily liable as against the primary liability of the tort-feasor spouse's separate property.
4. If a debtor spouse's separate property or share of the community estate received in a property division is applied to satisfy a money judgment for a debt that was assigned to the other spouse in a property division proceeding, the debtor spouse has a right of reimbursement from the "assignee" spouse to the extent of the property so applied.



C. Apportionment of Interests in Real Property

A tracing situation frequently encountered in family law matters concerns the characterization and apportionment of interest in a family residence or other real property purchased with both community and separate funds. Unless the residence or real property is clearly of one character alone, a court will usually characterize it as being primarily separate or community property and then determine any additional interests by applying one of the following apportionment methods:

1. Property Acquired Before Marriage in Separate Title and Mortgage Paid Down With Community Funds

Where a spouse acquires a home before marriage in separate title and makes no change in title during marriage and the parties utilize community funds toward the acquisition of the property that are not gifts to separate property, the community will acquire a pro tanto interest in the home in the ratio that the principal payments on the purchase price made with community funds bear to the payments made with separate funds. *Marriage of Moore* (1980) 28 Cal. 3d 366, 372-374, 168 Cal. Rptr. 662, 618 P.2d 208. In general, the formula expressed in *Moore*, as modified by that set forth in *Marriage of Marsden, supra*, 130 Cal. App. 3d at 436-440, 181 Cal. Rptr. 910 will be used to compute the respective community and separate property interests in the home.

The period of appreciation to which the pro tanto percentage applies is the date of marriage through the date of trial. *Marriage of Sherman* (2005) 133 Cal. App. 4th 735, 35 Cal. Rptr 3rd 137.

The *Higinbotham* case, discussed previously, involved a *Moore/Marsden* tracing situation. In that case, the wife argued that the community had an interest in the husband's separate real property by demonstrating that the principal payments on the loan secured by the property were made with community funds. Under the formula set forth in *Marsden, supra*, the community is entitled to reimbursement of the principal payments made with community funds and a *pro tanto* interest in any appreciation in the value of the property experienced during the marriage. The community's share of the appreciation is calculated by dividing the community payments of principal by the purchase price of the property. The resulting percentage is then multiplied by the appreciation during marriage to obtain the community share of the appreciation. In this case, the goal of the tracing would be to prove the character of funds used to make the loan payments as either community or separate.

The same *Moore/Marsden* apportionment approach applies where there is a premarital loan secured by a party's separate property and the property is refinanced during marriage and the original mortgage is paid in full with proceeds of a community property loan obtained jointly by the parties. The community interest under *Moore/Marsden* is calculated by adding the community payments that reduce the loan principal and the principal balance paid off with the new community loan, dividing the result by the purchase price of the home, then multiplying the result by the appreciation of the home during marriage. *Marriage of Branco* (1996) 47 Cal. App. 4th 1621, 1629, 55 Cal. Rptr. 2d 493, 496.

When both spouses contribute separate property funds to the purchase of the home, hold it as tenants in common before marriage, and make payments on the property with community funds after marriage, their separate and community property interests may also be calculated pursuant to the *Moore/Marsden* rule. First, the percentages of the parties' respective contributions to the original purchase price would be determined in order to establish the parties' respective separate property interests in the appreciation of the home's value. The parties' percentage appreciation in the value is added to their contributions, resulting in the appropriate amounts due each spouse as reimbursement for their separate property interests. *Marriage of Rico, supra*, 10 Cal. App. 4th at 710-711, 12 Cal. Rptr. 2d 659.

The *Moore/Marsden* approach was also applied where a wife, at time of separation, converted the community property home to the husband's separate property by signing a quitclaim deed and the community continued to make loan payments after the parties reconciled. *Marriage of Broderick* (1989) 209 Cal. App. 3d 489, 257 Cal Rptr. 397. The community acquired a *pro tanto* interest in the home based on the community payments **after** execution of the quitclaim deed. Any interest the community may have had by virtue of the pre-quitclaim payments was deemed to have been transferred to the husband as his separate property by the quitclaim deed.

2. Property Acquired Before Marriage in Separate Title and Expenditure for Improvements with Community Fund

In three recent family law cases, the appellate courts have changed the law by ruling on the applicability of the application of reimbursements for community funds used to improve the other spouse's separate property. *Marriage of Wolfe* (2001) 91 Cal. 4th 962, 110 Cal. Rptr. 2d 921; *Marriage of Allen* (2002) 96 Cal. 4th 497, 116 Cal. Rptr. 2d 887; and *Bono v. Clark* (2002) 103 Cal.App.4th 1409. The courts held that the community should be at least entitled to be reimbursed for the amount expended on improvements to a spouse's separate property or possibly be entitled to a pro tanto interest under the *Moore/Marsden* rule. These cases create several new issues that need to be addressed by a combination of experts and legal strategists. If community property was spent to improve separate property, the requesting party needs to decide whether to seek reimbursement in the amount of the improvement(s), in the amount of the increase in the equity, or in a proportional interest in the property.

3. Bono Court Decision Offers Significant Departure from Moore/Marsden

The *Bono* court departed from the *Moore/Marsden* approach in addressing the consideration of appreciation of property acquired prior to the date of marriage in three respects.

First, the application of *Moore/Marsden* typically begins at the date of marriage when the community usually begins to make mortgage payments. *Bono* suggests that since improvements are not generally initiated immediately or at the date of marriage, logic may dictate awarding the separate estate all of the market appreciation occurring before community improvements actually begin.

Secondly, the *Marsden* court credited the husband's separate property estate with premarital appreciation but did not include such appreciation in the calculation of the respective separate and community percentage interests. *Bono* indicates that "[i]n fairness, that appreciation should be credited to decedent's separate property estate just as if it were an element of the acquisition costs."

Thirdly, under the *Moore/Marsden* rule, the allocation of the community's pro tanto interest in the appreciation is applied from the date of marriage to the date of trial. In *Bono*, the court held that community appreciation begins with the funding of improvements and ends as of the date of separation. The *Bono* court held that the date of separation cutoff date should apply because this was a civil probate case (determining a community interest in separate property against a decedent's estate) as opposed to a dissolution of marriage proceeding.

The author believes the appellate court has made a calculation error in the cited Bono computation example. In calculating the during-marriage appreciation, they did not reduce the appreciation by the during-marriage cost of improvements. Consequently the community only receives the benefit of 60.78% (rather than 100%) of the total cost of the improvements expended on the property. The appellate court determined the value of the community property interest as \$243,137. The author's revised calculation of the value of the community interest totals \$273,529, greater than the appellate court determined value by \$30,392. A side-by-side comparison of the cited calculation and the author's revised computation method follows:

	<u>Cited Calculation</u>	<u>Author's Calculation</u>
I. Ratio:		
Total Investment:		
Purchase Price	12,500	12,500
Premarital (Pre-Improvement) Appreciation	37,500	37,500
Community Improvements	<u>77,500</u>	<u>77,500</u>
Total Investment	<u>127,500</u>	<u>127,500</u>
Ratio of Separate Property is \$50K ÷ \$127.5K	39.22%	39.22%
Ratio of Community Property is \$77.5K ÷ \$127.5K	60.78%	60.78%
II. Appreciation in Equity:		
Equity at Date of Separation (FMV Less Encumbrances)	450,000	450,000
Less Equity at Date of Marriage (Incl. Improvements)	<u>50,000</u>	50,000
Less Community Improvements		<u>77,500</u>
Equals Appreciation During Marriage	<u>400,000</u>	<u>322,500</u>
III. Value of Community Interest:		
Community Improvements		77,500
60,78% Share of Equity Appreciation During Marriage (\$400,000 x 60.78%)	<u>243,137</u>	
(\$322,500 x 60.78%)		<u>196,029</u>
Value of Community Interest	<u>243,137</u>	<u>273,529</u>
IV. Value of Plaintiff's Interest:		
One-Half of Community Interest (\$243,137 ÷ 2)	<u>121,569</u>	
(\$273,529 ÷ 2)		<u>136,765</u>

V. Value of Decedent's Interest:

39.22% Share of Equity Appreciation During Marriage		
(\$400,000 x 39.22%)	156,863	
(\$322,500 x 39.22%)		126,471
One-Half of Community Interest	121,569	136,765
Purchase Price	12,500	12,500
Premarital/Pre-Improvement Appreciation	<u>37,500</u>	<u>37,500</u>
Value of Decedent's Interest	<u>328,431</u>	<u>313,235</u>
Total Net Equity at Date of Separation	<u>450,000</u>	<u>450,000</u>

4. Sherman Court Decision Confirms Proper Moore/Marsden Valuation Date is Date of Trial

In re Marriage of Sherman (1984) 162 Cal.App.3d 1132, 208 Cal.Rptr. 832 the court was left to decide on the issue of whether the proper date to value a community property interest in a residence acquired prior to the date of marriage was the date of separation or the date of trial. The trial court used the date of separation however the Court of Appeal reversed. The Court of Appeal held that the proper date of valuation for Moore/Marsden calculation is the date of trial, citing:

FC § 2552 (a) provides: "For the purpose of division of the community estate upon dissolution of marriage or legal separation of the parties, except as provided in subdivision (b), ••the court shall value the assets and liabilities as near as practicable to the time of trial••." Subdivision (b) provides authority for alternate valuation date, which H did not request. "A date of separation valuation of property is appropriate "when the hard work and actions of one spouse ••alone•• and after separation, greatly increases the 'community' estate which then must be divided with the other spouse." [Citation.]' 'On the other hand, when an asset increases in value from non-personal factors such as inflation or market fluctuations, generally it is fair that both parties share in that increased value.'"

The court noted that nothing suggested that the increase in value of the residence during marriage was due to H's efforts, nor did he provide any reason why a date of trial valuation would be inequitable. In its decision, the Court disagreed with *Bono v. Clark's* [(2002) 103 Cal.App.4th 1409, 128 Cal.Rptr.2d 31] characterization of an increase in the value of a residence, owned during the marriage and was partially community property, as the earnings or accumulations of one spouse while living separate and apart from the other spouse.

5. Premarital Property Converted to Joint Title during Marriage

Where a spouse acquires a home before marriage in separate title and title is converted to joint form during marriage, the home is presumed to be community property pursuant to FC § 2581, unless the presumption is rebutted. If the community property presumption is not rebutted, the spouse who originally held title may obtain reimbursement under FC § 2640 for his or her traceable separate property contributions to the property's acquisition. If prior to conversion to joint form, non-gift community contributions were made to the home's acquisition, the community would acquire a pro tanto interest in the separate property up to the time of conversion using the *Moore/Marsden* formula. This pro tanto interest must be taken into account in computing the amount of the separate property reimbursement under FC § 2640. *Marriage of Perkal, supra*, 203 Cal. App.3d 1198, 250 Cal.Rptr 296.

Similarly, if the joint title-community property presumption of FC § 2581 is rebutted, so that the premarital property remained separate property, the *Moore/Marsden* formula would be used to apportion the various interests in the property when community contributions were made to its acquisition. *Marriage of Kahan* (1985) 174 Cal. App. 3d 63, 72, 219 Cal. Rptr. 700.

6. Property Acquired During Marriage with Separate Property Down Payment and Community Credit

In the case where spouses acquire a home during marriage with a separate property down payment and community payments on a purchase money loan that was secured by the property and obtained on the basis of community credit, it is necessary to first determine whether any title presumptions control.

As discussed above, where real property is acquired during marriage in one of the joint forms specified in FC § 2581, or if prior law applies (proceeding commenced prior to January 1, 1984) but the home is a single-family residence with title in joint tenancy or as "husband and wife," the home will be presumed to be community property. See FC § 760, 803, 2581; prior version of CC § 5110; If this presumption is not rebutted, there is no apportionment of interests and there is, at most, a tracing right of reimbursement under FC § 2640 for any separate property contributions to the acquisition of the real property. However, if the joint title presumption is rebutted by written evidence that a separate property interest in the property was to be maintained, the spouse who made the separate property contribution has a separate property interest in the proportion that the downpayment bears to the purchase price; and the



community acquires that percentage of the residence which the community loan bears to the purchase price. *Marriage of Lucas, supra*, 27 Cal. 3d 808, 166 Cal. Rptr. 853 (applying formula in *Marriage of Aufmuth, supra*, 89 Cal. App. 3d 446, 152 Cal. Rptr. 668).

HOW FORENSIC ACCOUNTANTS PERFORM TRACING PROJECTS

A. Client/Attorney Interview

Not all, but most, tracing projects require the help of forensic accountants (accountants who are experienced in litigation support services). When the attorney



concludes that the transactions occurring during the marriage are too complex for presentation by the client at trial, forensic accountants may be helpful and are usually brought into the case.

Initially the attorney and the client will advise the accountant of all relevant facts related to the tracing issues. The client will generally have some recollection of the flow of his or her separate funds into community acquisitions or bank accounts. Tax returns of the parties, if available, would be produced for the accountant's review. The information resulting from the initial meeting will form the basis of much, if not all, of the subsequent tracing activity.

B. Discovery

Discovery is the next step in the process. After the client/attorney interview, a cursory review of the available documentation is made. If insufficient data is available, further discovery is required before any meaningful work can proceed. The discovery will focus on obtaining all relevant records that are in the client's possession. Bank statements, canceled checks, tax returns, check registers, brokerage account statements, estate planning, and escrow documents are the most common sources of information relied upon by forensic accountants.

When the opposing spouse has relevant documents, obtaining this information involves contacting the other side. This contact may take on an informal, "friendly", give-and-take posture, thereby reducing client costs, or through formal legal requests

for the production of documents. In either case, access to the relevant records is the most important aspect of the case for the accountant doing the tracing.

Frequently neither party has saved the relevant documents. In these cases, subpoenas of banks or stock brokerages are commonplace. If an accountant is hired, it is the accountant's responsibility to let the attorney know what records are needed. It is the attorney's responsibility to coordinate the necessary discovery.

C. Cost-Benefit Analysis

When discovery is substantially complete the accountant, attorney and the client should take a step back to determine whether the tracing will be cost-effective. Clients should be advised of the estimated accounting costs at this juncture. A meeting attended by the client, the attorney, and the forensic accountant may be necessary at this point. During this meeting, the client should be advised of all cost-benefit factors in order to make an informed decision on whether to proceed or not.

D. Computerization of Data

A comprehensive inventory of documents is invaluable to a tracing project. With the volume of documents produced, a particular document may be overlooked or forgotten. This document may make the critical difference in proving the characterization of an asset. Creating a database (computer input) of all documents available allows us the ability to sort the data alphabetically, chronologically, and numerically, all at the push of a button (or click of a mouse).

A spreadsheet analysis of the data for each account is prepared to keep track of separate and community account balances. Current computer technology has significantly lowered the cost of tracing projects. Today's personal computers have the ability to link accounts together so that if a change in one account impacts another account, that change will automatically update the related account. The speed and accuracy of data calculations has also reduced the time needed to complete a proper tracing analysis.

Some forensic accountants employ the use of specialized proprietary software to assist in the analysis of tracing assignments. Others rely on commercially available software to perform the same tasks. Regardless of the resources used, the results should be identical if the data, assumptions, and logic are the same and the calculations are not flawed.

E. Preparation of Balance Sheet at Date of Marriage

A key element in a successful tracing is the ability to determine the character of monies deposited into a commingled account and the nature of the disbursements from that account. If the source of funds is unknown, the deposit is presumptively community. Preparing a separate balance sheet at date of marriage is often helpful in making evaluations as to the character of deposits into the commingled account(s).



Prenuptial agreements entered into by spouses at the time of marriage can be awkward and inject rancor to an otherwise joyous occasion. For that reason, the issue of a prenuptial agreement may not be raised. Individuals with significant separate property assets have an alternative that can help protect their separate property. Have a balance sheet prepared contemporaneous to the date of marriage, including retaining all of the supporting documentation. The date of marriage balance sheet will go a long way towards identifying separate assets and provide a basis for subsequent tracing work.

The date of marriage balance sheet may be created from a number of information sources. Income tax returns, bank and brokerage statements, marital settlement agreements or judgments from a prior marriage, pre-nuptial agreements or other written agreements between the parties, loan applications, personal financial statements prepared by CPA's, and governmental filings are the most common documents from which balance sheet information may be obtained.

DATE TO BEGIN TRACING

A tracing analysis involves the cumulative and chronological evaluation of a commingled account over a relevant time period. The most common starting points are the date of marriage, the date the commingled account was opened, the time period in which the property in question was acquired, the date a gift or inheritance was received, and January 1, 1984 (the date FC § 2640 became effective). When this time period should commence is a question of fact for the tracing expert. See *v See*, supra, states:

Only when, through no fault of the husband, it is not possible to ascertain the balance of income and expenditures at the time property was acquired, can recapitulation of the total community expenses and income throughout the marriage be used to establish the character of the property.

This passage suggests that an account must be evaluated from the date of marriage to the date the asset is purchased; however, this much detail is not always necessary and, in fact, may prove burdensome in many cases. An alternative is to start the analysis at a date prior to the asset acquisition, when there was a minimal balance in the commingled account, and presume this balance to be community. This procedure is more cost-effective and accomplishes the same result as a complete accounting from the date of marriage to the date of the acquisition of the property, with no prejudice to either party. For example, assume a separate account existed at the date of marriage with a \$5,000 balance and that the account balance fell to \$100 just prior to the time of the asset acquisition being traced. The need to trace the activity in the account leading to the decrease in the account balance is unnecessary if the asserting spouse is willing to concede that the \$100 balance is community. The cost-benefit attributes of this decision are obvious.

PRACTICAL TRACING PROBLEMS

Overcoming the community property presumption may pose difficult practical problems. An obvious problem is the unavailability of records from which to trace transactions. This situation can be fatal to the interests of the asserting spouse because the burden of proof imposed by case law requires that the party seeking separate characterization provide adequate documentation supporting his or her contention(s). Missing documentation is the most typical problem associated with long marriages.

The large volume of transactional activity within an account may be another common obstacle to performing a persuasive tracing. The complexity of the tracing increases with the number of bank accounts and the volume of activity within those accounts. In cases that exhibit voluminous transactional activity, it may be impossible to obtain even a preliminary cost-benefit analysis from a forensic accountant

regarding the need for a tracing. The client's memory of events may be the only information from which to make an informed decision in these cases.



The quality of the records, even in situations where all existing relevant documentation is available, is another factor that will dictate success or failure of a tracing. Identifying the source and character of deposits to an account, as well as identifying the nature of disbursements, are key elements in providing a tracing accounting to the court. A party may be able to obtain bank statements showing the date and

amount of deposits to an account. However, without additional information concerning the nature of the deposits shown on the bank statement, the tracing expert will only be certain of the amounts of the deposits, but not their sources. The absence of such facts may doom the tracing.

In spite of the difficulties, it is often possible to unravel commingled accounts and establish separate property claims. An effective tracing causes the burden of proof to shift to the other spouse. The other spouse may then either accept the results or attempt to rebut them. A rebuttal of the tracing may focus on the facts supporting characterization decisions made throughout the tracing. Any faulty reasoning regarding individual transactions may impair the effectiveness of the tracing.

CONCLUSION

Tracing theory is a sophisticated and complex area of family law. Specialists in family law are presumed to be knowledgeable and experienced in this area. Not all lawyers representing clients in marital dissolutions have this kind of expertise. It is here that experienced forensic accountants can best help both the experienced and inexperienced attorney correctly identify and effectively undertake tracing matters.



**R. OWEN AND ANN N. CONVENIENCE
SCHEDULE OF COMMUNITY / SEPARATE PROPERTY ASSETS**

(Date of Marriage: April 1, 2000 • Date of Separation: July 4, 2004)

Line #	Assets	Notes	VALUE DATE	TOTAL VALUE	Respondent's Separate Property	COMMUNITY PROPERTY		
						Value	DISTRIBUTION	
							Ann N. - P	R. Owen - R
1.	<u>I. Cash:</u>							
2.	Chase a/c #928 [T-928]	[1]	6/30/04	9,618	7,558	2,060	2,060	
3.	Chase a/c #954 [T-954]	[1]	6/30/04	12,585	12,585	0	0	
4.	Dreyfus MM a/c #696 [T-696]	[1]	6/30/04	196,102	100,330	95,772	95,772	
5.	Calvert Tax Free a/c 2099 [T-99]	[1]	6/30/04	201,725	201,725	0	0	
6.	Total Cash			420,030	322,198	97,832	97,832	
7.	<u>II. Securities:</u>							
8.	200 shares Exxon Corp. (inherited 8/7/85)	[2]	7/4/04	12,975	12,975			
9.	School Lease Pur (acq 10/15/84)	[2]	7/4/04	20,000	20,000			
10.	15000 shares Airsoft Inc. (acq 11/8/03)		7/4/04	4,500		4,500	4,500	
11.	State of CA Higher Educ (acq 9/5/01)		7/4/04	210,000		210,000	210,000	
12.	FC § 2640 Reimbursement due Respondent	[3]		0	175,140	(175,140)	(175,140)	
13.	Merrill Lynch a/c #000-30515 [T-515]	[1]	7/1/04	221,238	123,813	97,425	97,425	
14.	Total Securities			468,713	331,927	136,785	(73,215)	
15.	<u>III. Pension/Profit Sharing and IRA:</u>							
16.	Merrill Lynch IRA a/c #88812 [T-812]	[1]	6/27/04	7,742	5,736	2,006	2,006	
17.	Total Pension/Profit Sharing and IRA			7,742	5,736	2,006	2,006	
18.	<u>IV. Real Estate:</u>							
19.	Mount Holyoke Ave. (acq 12/20/03)			724,750		724,750	724,750	
20.	Encumbrance		7/4/04	(494,921)		(494,921)	(494,921)	
21.	FC § 2640 Reimbursement due Respondent	[4]		0	194,972	(194,972)	(194,972)	
22.	Total Real Estate			229,829	194,972	34,857	34,857	
23.	<u>V. Automobiles:</u>							
24.	2000 Honda Accord LX (acq 5/21/00)		6/30/04	5,200		5,200	5,200	
25.	Total Automobiles			5,200	0	5,200	0	

R. OWEN AND ANN N. CONVENIENCE
SCHEDULE OF COMMUNITY / SEPARATE PROPERTY ASSETS
 (Date of Marriage: April 1, 2000 • Date of Separation: July 4, 2004)

Line #	ASSETS	Notes	VALUE DATE	TOTAL VALUE	Respondent's Separate Property	COMMUNITY PROPERTY		
						Value	DISTRIBUTION	
							Ann N. - P	R. Owen - R
26.	<u>VI. Other Assets:</u>							
27.	1946 Piper J3C-65 (2/3 int - acq 5/14/02)		6/30/04	13,333		13,333	13,333	
28.	FC § 2640 Reimbursement due Respondent	[5]		0	8,568	(8,568)	(8,568)	
29.	D.B. Rays Investment (acq 8/14/02)		6/30/04	50,000		50,000	25,000	
30.	FC § 2640 Reimbursement due Respondent	[6]		0	29,199	(29,199)	(29,199)	
31.	NV Metro IV (acq 3/26/03)		6/30/04	50,000		50,000	50,000	
32.	FC § 2640 Reimbursement due Respondent	[7]		0	49,675	(49,675)	(49,675)	
33.	Airplane Hangar (acq 3/24/04 & 5/6/04)		6/30/04	13,129		13,129	13,129	
34.	FC § 2640 Reimbursement due Respondent	[8]		0	1,329	(1,329)	(1,329)	
35.	Total Other Assets			126,462	88,771	37,692	25,000	
36.	Sub-Total			<u>1,257,977</u>	<u>943,604</u>	<u>314,373</u>	240,200	
37.	Equalization Payment					(83,014)	83,014	
38.	Total					<u>\$157,186</u>	<u>\$157,186</u>	

**R. OWEN AND ANN N. CONVENIENCE
NOTES TO THE SCHEDULE OF COMMUNITY / SEPARATE PROPERTY ASSETS**

Note 1 - Allocation between Community and Separate Property:

The figures represent the community and separate property balance at the date of separation (see supporting tracing schedules).

Note 2 - Allocated to Respondent's Separate Property:

Exxon and School Lease Purchase were securities owned by Respondent prior to marriage.

FC § 2640 Reimbursement due Respondent:

<u>A/C</u>	<u>Date</u>	<u>Check #</u>	<u>Description</u>	<u>Amount</u>	<u>Separate</u>	<u>Community</u>	<u>Reference</u>
<u>Note 3 - State of California Higher Education Fac. Bond:</u>							
954	9/5/01		State of CA Higher Ed Fac	207,738	175,140	32,598	T-954, line 70
			FC § 2640 Reimbursement due Respondent re: State Bond		175,140		
<u>Note 4 - Mount Holyoke Avenue Property (Family Residence):</u>							
928	11/8/03	2981	Jon Douglas (escrow deposit)	10,000	0	10,000	T-928, line 1088
928	12/6/03	3001	San Vicente Escrow	11,750	505	11,246	T-928, line 1112
954	12/16/03		San Vicente Escrow	217,346	194,467	22,879	T-954, line 119
			Total Down payment - Mount Holyoke Ave.	239,096	194,972	44,124	
			FC § 2640 Reimbursement due Respondent re: Mt. Holyoke		194,972		
<u>Note 5 - 1946 Piper J3C-65:</u>							
928	5/14/02	2681	First Interstate	18,667	8,568	10,099	T-928, line 648
			Total FC § 2640 Reimbursement due Respondent re: Piper		8,568		
<u>Note 6 - D.B. Rays Investment Trust:</u>							
928	7/31/02	2714	D.B. Rays Investment Trust (Nashville)	50,000	29,199	20,801	T-928, line 700
			Total FC § 2640 Reimbursement due Respondent re: D.B. Rays		29,199		
<u>Note 7 - NV Metro IV:</u>							
954	3/26/03		To NV Metro	50,000	49,675	325	T-954, line 105
			Total FC § 2640 Reimbursement due Respondent re: NV Metro		49,675		
<u>Note 8 - Airplane Hangar:</u>							
928	3/24/04	3088	Light Aircraft Cover Grp (dep. hangar)	3,000	0	3,000	T-928, line 1229
928	5/6/04	3148	Light Aircraft Cover Group (hangar)	10,129	1,329	8,800	T-928, line 1281
			Total Purchase of Airplane Hangar	13,129	1,329	11,800	
			Total FC § 2640 Reimbursement due Respondent re: Hangar		1,329		

**Statistical Facts in the Determination of
Community vs. Separate Property Interest in the
Sale Proceeds of the Hartzell Street Property**

Property: 1234 Hartzell Street

Acquisition:

Date June 6, 1996
Title R. Owen Convenience, a single man

Purchase Price		\$187,500
Downpayment	\$92,500	
Original 1 st Trust Deed	95,000	

Marriage:

Date April 1, 2000

Fair Market Value		\$399,500
Original 1 st Trust Deed	\$74,066	

Loan Payoff:

	R. Owen Separate	Community	Total
Date February 19, 2002			
Original 1 st Trust Deed Paid Off <i>(See T-954, Line 87, allocation of Loan Payoff)</i>	\$9,078	\$62,067	\$71,145

Sale:

Date May 10, 2004		
Price		\$445,190
Cost of Sale	\$38,065	
Original 1 st Trust Deed	0	
Net Proceeds <i>(Deposit to Chase a/c #954)</i>	\$407,125	[T-954, Line 137]

**Allocation of Community / Separate Property Interest in the
Sale Proceeds of the Hartzell Street Property**

Description	L i n e	Column		
		[a]	[b]	[c]
		Total Interest	R. Owen's Separate Interest	Community Interest
Allocated Cost:				
+ Down payment	1.	\$92,500	\$92,500	
+ Principal reduction prior to marriage	2.	20,934	20,934	
+ Principal reduction during marriage prior to payoff	3.	2,921		\$2,921
+ Principal loan balance paid off during marriage	4.	71,145	9,078	62,067
Total Allocated Cost (Add Lines 1 thru 4)	5.	187,500	122,512	64,988
Allocation Percentage (Divide Line 5 Column [b] and [c] to Column [a])	6.	100.0%	65.34%	34.66%
Allocated Appreciation:				
+ Appreciation prior to marriage	7.	212,000	212,000	
+ Appreciation during marriage	8.	45,690	29,854	15,836
Total Allocated Appreciation (Add Lines 7 and 8)	9.	257,690	241,854	15,836
Total Allocation of Cost and Appreciation (Add Lines 5 and 9)	10.	\$445,190	\$364,366	\$80,824
Allocation Percentage (Divide Line 10 Column [b] and [c] to Column [a])	11.	100.0%	81.84%	18.16%
Allocation of Net Proceeds (T-954, Line 137)	12.	\$407,125	\$333,211	\$73,914

In Re Marriage of Convenience
Chase a/c #000-2-32928

Case No. BD 000-666

T R A C I N G

LINE NO.	A/C		DATE	CHECK #	DESCRIPTION	TRANSACTION AMOUNT	ACCOUNT BALANCE	R. OWEN SEPARATE		COMMUNITY PROPERTY	
	CODE	S/C						TRANSACTION	BALANCE	TRANSACTION	BALANCE
629	928	C	5/1/02	2658	City of Santa Monica	(146.00)	23,264.34	0.00	12,090.10	(146.00)	11,174.24
630	928	C	5/5/02		Employer	1,859.09	25,123.43	0.00	12,090.10	1,859.09	13,033.33
631	928	C	5/5/02			127.00	25,250.43	0.00	12,090.10	127.00	13,160.33
632	928	C	5/5/02	2664	Costco Pharmacy	(81.56)	25,168.87	0.00	12,090.10	(81.56)	13,078.77
633	928	C	5/5/02	2665	Costco	(425.51)	24,743.36	0.00	12,090.10	(425.51)	12,653.26
634	928	C	5/11/02		Employer	1,859.09	26,602.45	0.00	12,090.10	1,859.09	14,512.35
635	928	C	5/11/02	2668	U.S. Sprint	(14.30)	26,588.15	0.00	12,090.10	(14.30)	14,498.05
636	928	C	5/12/02	2676	L.A. Times	(13.44)	26,574.71	0.00	12,090.10	(13.44)	14,484.61
637	928	C	5/12/02	2679	Century Cable	(24.20)	26,550.51	0.00	12,090.10	(24.20)	14,460.41
638	928	C	5/12/02	2671	So. CA Gas Co.	(29.52)	26,520.99	0.00	12,090.10	(29.52)	14,430.89
639	928	C	5/12/02	2672	GTE	(31.35)	26,489.64	0.00	12,090.10	(31.35)	14,399.54
640	928	C	5/12/02	2666	Palisades A	(126.00)	26,363.64	0.00	12,090.10	(126.00)	14,273.54
641	928	C	5/12/02	2678	Blue Sh	(55)	25,638.09	0.00	12,090.10	(725.55)	13,547.99
642	928	C	5/12/02	2675	Los Ar	(43)	24,885.66	0.00	12,090.10	(752.43)	12,795.56
643	928	C	5/13/02	2667	D.W.P.	(6.23)	24,619.43	0.00	12,090.10	(266.23)	12,529.33
644	928	C	5/13/02	2673	Chase	(2,375.24)	22,244.19	0.00	12,090.10	(2,375.24)	10,154.09
645	928	C	5/14/02			(0.10)	22,244.09	0.00	12,090.10	(0.10)	10,153.99
646	928	C	5/14/02	2677	Los Angeles Mis	(25.00)	22,219.09	0.00	12,090.10	(25.00)	10,128.99
647	928	C	5/14/02	2674	Time Life	(29.97)	22,189.12	0.00	12,090.10	(29.97)	10,099.02
648	928	C	5/14/02	2681	First Interstate	(18,666.66)	3,522.46	(8,567.64)	3,522.46	(10,099.02)	0.00
649	928	C	5/21/02	2682	Costco	(268.17)	3,254.29	(268.17)	3,254.29	0.00	0.00
650	928	C	5/26/02		Employer	1,859.09	5,113.38	0.00	3,254.29	1,859.09	1,859.09
651	928	C	5/26/02		Employer	1,859.09	6,972.47	0.00	3,254.29	1,859.09	3,718.18
652	928	C	5/26/02		Employer - reimb.	341.82	7,314.29	0.00	3,254.29	341.82	4,060.00
653	928	C	5/26/02	2684	Santa Monica Hospital	(400.00)	6,914.29	0.00	3,254.29	(400.00)	3,660.00
654	928	C	6/1/02		Employer Pay \$1,859.09 + reimb. \$114.43	1,973.52	8,887.81	0.00	3,254.29	1,973.52	5,633.52
655	928	C	6/1/02	2683	Federal Aviation Administration	(5.00)	8,882.81	0.00	3,254.29	(5.00)	5,628.52
656	928	C	6/1/02	2686	Costco	(79.02)	8,803.79	0.00	3,254.29	(79.02)	5,549.50
657	928	C	6/1/02	2685	Costco Pharmacy	(232.21)	8,571.58	0.00	3,254.29	(232.21)	5,317.29
658	928	C	6/8/02	2688	Chase	(50.00)	8,521.58	0.00	3,254.29	(50.00)	5,267.29
659	928	S	6/9/02		CA Water Bonds	1,800.00	10,321.58	1,800.00	5,054.29	0.00	5,267.29
660	928	C	6/9/02	2690	Century Cable	(24.20)	10,297.38	0.00	5,054.29	(24.20)	5,243.09
661	928	C	6/9/02	2693	So. CA Gas Co.	(24.60)	10,272.78	0.00	5,054.29	(24.60)	5,218.49
662	928	C	6/9/02	2687	U.S. Sprint	(34.57)	10,238.21	0.00	5,054.29	(34.57)	5,183.92
663	928	C	6/9/02	2689	Los Angeles Country Club	(425.00)	9,813.21	0.00	5,054.29	(425.00)	4,758.92
664	928	C	6/9/02	2692	Continental Assoc.	(1,250.00)	8,563.21	0.00	5,054.29	(1,250.00)	3,508.92
665	928	C	6/11/02	2691	Golf Tips	(8.55)	8,554.66	0.00	5,054.29	(8.55)	3,500.37

See Community / Separate Property Balance Sheet Note 5 - 1946 Piper J3c-65

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T R A C I N G

LINE NO.	A/C		CHECK DATE	CHECK #	DESCRIPTION	TRANSACTION AMOUNT	ACCOUNT BALANCE	R. OWEN SEPARATE		COMMUNITY PROPERTY	
	CODE	S/C						TRANSACTION	BALANCE	TRANSACTION	BALANCE
666	928	C	6/12/02		Employer Pay \$1,995.01 + reimb. \$109.23	2,104.24	10,658.90	0.00	5,054.29	2,104.24	5,604.61
667	928	C	6/15/02		Employer	2,037.93	12,696.83	0.00	5,054.29	2,037.93	7,642.54
668	928	S	6/15/02		Exxon	144.00	12,840.83	144.00	5,198.29	0.00	7,642.54
669	928	C	6/15/02	2694	USAA Federal Savings	(136.99)	12,703.84	0.00	5,198.29	(136.99)	7,505.55
670	928	C	6/18/02	2695	Costco Pharmacy	(54.90)	12,648.94	0.00	5,198.29	(54.90)	7,450.65
671	928	C	6/18/02	2696	Costco	(228.78)	12,420.16	0.00	5,198.29	(228.78)	7,221.87
672	928	C	6/22/02		Employer	2,037.93	14,458.09	0.00	5,198.29	2,037.93	9,259.80
673	928	C	6/23/02		From Line of Credit	4,482.00	18,940.09	0.00	5,198.29	4,482.00	13,741.80
674	928	C	6/23/02	2697	Charles Schwab a/c #0981	(18,940.00)	0.09	(5,198.20)	0.09	(13,741.80)	0.00
675	928	L	6/24/02		From Chase #6954	10,000.00	10,000.09	9.44	9.53	9,990.56	9,990.56
676	928	C	6/24/02		Employer - reimb.	392.12	10,392.21	0.00	9.53	392.12	10,382.68
677	928	C	6/24/02			34.71	10,426.92	0.00	9.53	34.71	10,417.39
678	928	C	7/7/02	2699	City of Santa Monica	(146.00)	10,280.92	0.00	9.53	(146.00)	10,271.39
679	928	C	7/14/02		Automatic Payment to Line of Credit	(134.46)	10,146.46	0.00	9.53	(134.46)	10,136.93
680	928	C	7/20/02		Employer	2,037.93	12,184.39	0.00	9.53	2,037.93	12,174.86
681	928	C	7/20/02		Employer	2,037.93	14,222.32	0.00	9.53	2,037.93	14,212.79
682	928	C	7/20/02		Employer	2,037.93	16,260.25	0.00	9.53	2,037.93	16,250.72
683	928	C	7/20/02		Employer	2,037.93	18,298.18	0.00	9.53	2,037.93	18,288.65
684	928	C	7/20/02		Employer - reimb.	187.20	18,485.38	0.00	9.53	187.20	18,475.85
685	928	S	7/20/02		Inland Steel Corp.	87.50	18,572.88	87.50	97.03	0.00	18,475.85
686	928	C	7/27/02		Employer	2,037.93	20,610.81	0.00	97.03	2,037.93	20,513.78
687	928	C	7/27/02	2698	Cub Club (1992 dues)	(15.00)	20,595.81	0.00	97.03	(15.00)	20,498.78
688	928	C	7/27/02	2701	Costco	(159.18)	20,436.63	0.00	97.03	(159.18)	20,339.60
689	928	C	7/29/02	2700	Rescue Rooter	(99.00)	20,337.63	0.00	97.03	(99.00)	20,240.60
690	928	C	7/30/02	2717	Palisades Post	(18.00)	20,319.63	0.00	97.03	(18.00)	20,222.60
691	928	C	7/30/02	2708	So. CA Gas Co.	(25.16)	20,294.47	0.00	97.03	(25.16)	20,197.44
692	928	C	7/30/02	2702	Chase	(28.00)	20,266.47	0.00	97.03	(28.00)	20,169.44
693	928	C	7/30/02	2718	St	(61.00)	20,205.47	0.00	97.03	(61.00)	20,108.44
694	928	C	7/30/02	2712		(119.00)	20,086.47	0.00	97.03	(119.00)	19,989.44
695	928	C	7/30/02	2706		(1,384.68)	18,701.79	0.00	97.03	(1,384.68)	18,604.76
696	928	C	7/31/02	2709	L	(13.44)	18,688.35	0.00	97.03	(13.44)	18,591.32
697	928	C	7/31/02	2715	U.S. Spinn	(40.03)	18,648.32	0.00	97.03	(40.03)	18,551.29
698	928	C	7/31/02		Employer	2,037.93	20,686.25	0.00	97.03	2,037.93	20,589.22
699	928	L	7/31/02		From Chase #6954	31,000.00	51,686.25	30,788.46	30,885.49	211.54	20,800.76
700	928	C	7/31/02	2714	D.B. Rays Investment Trust (Nashville)	(50,000.00)	1,686.25	(29,199.24)	1,686.25	(20,800.76)	0.00
701	928	S	8/3/02		Joan M. Convenience Family Trust	20,000.00	21,686.25	20,000.00	21,686.25	0.00	0.00
702	928	C	8/3/02	2703	GTE	(50.04)	21,636.21	(50.04)	21,636.21	0.00	0.00

See Community / Separate Property Balance Sheet Note 6 - D.B. Rays Invest. Trust

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In Re Marriage of Convenience
Chase a/c #000-0226954

Case No. BD 000-666

T R A C I N G

LINE NO.	A/C CODE	S/C	DATE	CHECK #	DESCRIPTION	TRANSACTION AMOUNT	ACCOUNT BALANCE	R. OWEN SEPARATE		COMMUNITY PROPERTY	
								TRANSACTION	BALANCE	TRANSACTION	BALANCE
79	954	S	12/31/01		CA Water Bonds	1,800.00	6,606.26	1,800.00	3,032.10	0.00	3,574.16
80	954	I	12/31/01		Interest	28.20	6,634.46	12.94	3,045.04	15.26	3,589.42
81	954	L	2/4/02		From Chase #2928	20,000.00	26,634.46	0.00	3,045.04	20,000.00	23,589.42
82	954	ED	2/4/02		From Chase #2928	6,500.00	33,134.46	5,480.03	8,525.07	1,019.97	24,609.39
83	954	C	2/4/02		From Chase #2928	45.31	33,179.77	0.00	8,525.07	45.31	24,654.70
84	954	L	2/13/02		From Chase #2928	2,500.00	35,679.77	1,078.94	9,604.01	1,421.06	26,075.76
85	954	L	2/19/02		From Dreyfus #9696	36,000.00	71,679.77	0.00	9,604.01	36,000.00	62,075.76
86	954	I	2/19/02		Wire Transfer Fee	(10.00)	71,669.77	(1.34)	9,602.67	(8.66)	62,067.10
87	954	C	2/19/02		Imco Realty Services-Payoff Mortgage	(71,144.93)	524.84	(9,077.83)	524.84	(62,067.10)	0.00
88	954	I	3/31/02		Interest	63.19	588.03	63.19	588.03	0.00	0.00
89	954	L	6/23/02		From Dreyfus #9696	10,000.00	10,588.03	0.00	588.03	10,000.00	10,000.00
90	954	I	6/23/02		Wire Transfer Fee	(10.00)	10,578.03	(0.56)	587.47	(9.44)	9,990.56
91	954	C	6/24/02		To Chase #2928	(10,000.00)	578.03	(9.44)	578.03	(9,990.56)	0.00
92	954	I	6/30/02		Interest	5.23	583.26	5.23	583.26	0.00	0.00
93	954	L	8/12/02		From Dreyfus #9696	31,000.00	31,583.26	30,788.46	31,371.72	211.54	211.54
94	954	C	8/13/02		To Chase #2928	(31,000.00)	583.26	(30,788.46)	583.26	(211.54)	0.00
95	954	I	9/30/02		Interest	6.34	589.60	6.34	589.60	0.00	0.00
96	954	L	12/10/02		From Chase #2928	35,000.00	35,589.60	21,446.66	22,036.26	13,553.34	13,553.34
97	954	L	12/10/02		From Charles Schwab #0981	24,560.00	60,149.60	6,740.64	28,776.91	17,819.36	31,372.69
98	954	C	12/10/02		From Charles Schwab #0981	18.34	60,167.94	0.00	28,776.91	18.34	31,391.03
99	954	L	12/21/02		From Chase #2928	100,000.00	160,167.94	60,247.51	89,024.41	39,752.49	71,143.53
100	954	I	12/31/02		Interest	168.94	160,336.88	93.90	89,118.31	75.04	71,218.57
101	954	C	1/7/03		To Chase #2928	(100,000.00)	60,336.88	(28,781.43)	60,336.88	(71,218.57)	0.00
102	954	S	1/22/03		CA Water Bonds	15,375.00	75,711.88	15,375.00	75,711.88	0.00	0.00
103	954	S	1/22/03		CA Water Bonds	15,375.00	91,086.88	15,375.00	91,086.88	0.00	0.00
104	954	C	1/22/03		Employer - reimb.	325.14	91,412.02	0.00	91,086.88	325.14	325.14
105	954	C	3/26/03		To N.V. Metro - NVM	(50,000.00)	41,412.02	(49,674.86)	41,412.02	(325.14)	0.00
106	954	I	3/31/03		Interest	521.08	41,933.10	521.08	41,933.10	0.00	0.00
107	954	I	6/30/03		Interest	235.88	42,168.98	235.88	42,168.98	0.00	0.00
108	954	L	9/7/03		From Chase #2928	52,000.00	94,168.98	21,065.93	63,234.91	30,934.07	30,934.07
109	954	I	9/30/03		Interest	295.18	94,464.16	198.21	63,433.13	96.97	31,031.03
110	954	L	10/12/03		From Chase #2928	8,000.00	102,464.16	4,425.51	67,858.64	3,574.49	34,605.52
111	954	C	10/12/03		Employer	1,941.87	104,406.03	0.00	67,858.64	1,941.87	36,547.39
112	954	C	10/12/03		Employer - reimb.	139.30	104,545.33	0.00	67,858.64	139.30	36,686.69
113	954	C	10/12/03		Employer - reimb.	159.64	104,704.97	0.00	67,858.64	159.64	36,846.33
114	954	S	10/12/03		School Lease Pur - Income	980.00	105,684.97	980.00	68,838.64	0.00	36,846.33

See Calculation of Community / Separate Property Allocation for the Hartzell Street Property Line 5 - Loan Paid in Full

See Community / Separate Property Balance Sheet Note 7 - NV Metro IV

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T R A C I N G

LINE NO.	A/C CODE	S/C	DATE	CHECK #	DESCRIPTION	TRANSACTION AMOUNT	ACCOUNT BALANCE	R. OWEN SEPARATE		COMMUNITY PROPERTY	
								TRANSACTION	BALANCE	TRANSACTION	BALANCE
115	954	C	10/12/03			1,032.23	106,717.20	0.00	68,838.64	1,032.23	37,878.56
116	954	C	11/4/03		To Chase #2928	(15,000.00)	91,717.20	0.00	68,838.64	(15,000.00)	22,878.56
117	954	L	12/7/03		From Dreyfus #9696	142,000.00	233,717.20	142,000.00	210,838.64	0.00	22,878.56
118	954	L	12/13/03		From Chase #2928	20,000.00	253,717.20	20,000.00	230,838.64	0.00	22,878.56
119	954	C	12/16/03		San Vicente Escrow	(217,346.00)	36,371.20	(194,467.44)	36,371.20	(22,878.56)	0.00
120	954	C	12/29/03		Employer - Bonus	28,000.00	64,371.20	0.00	36,371.20	28,000.00	28,000.00
121	954	C	12/29/03		Employer	1,983.70	66,354.90	0.00	36,371.20	1,983.70	29,983.70
122	954	C	12/29/03			170.00	66,524.90	0.00	36,371.20	170.00	30,153.70
123	954	I	12/31/03		Interest	513.96	67,038.86	281.00	36,652.20	232.96	30,386.66
124	954	L	1/5/04		From	4,000.00	71,038.86	0.00	36,652.20	4,000.00	34,386.66
125	954	C	1/5/04		Employer	1,828.67	72,867.53	0.00	36,652.20	1,828.67	36,215.33
126	954	C	1/26/04		To Chase #2928	(5,000.00)	67,867.53	0.00	36,652.20	(5,000.00)	31,215.33
127	954	S	2/8/04		Inland Steel Co.	87.50	67,955.03	87.50	36,739.70	0.00	31,215.33
128	954	C	2/8/04		Employer	1,828.67	69,783.70	0.00	36,739.70	1,828.67	33,044.00
129	954	ED	2/8/04		Int - Higher Education Fac - Interest	6,500.00	76,283.70	5,480.03	42,219.73	1,019.97	34,063.97
130	954	LC	2/8/04		La Connection - Income	21,240.00	97,523.70	15,971.64	58,191.37	5,268.36	39,332.33
131	954	C	3/8/04		To Chase #2928	(6,120.00)	91,403.70	0.00	58,191.37	(6,120.00)	33,212.33
132	954	S	3/28/04		Annual Gift - Joan M. Convenience Trust	20,000.00	111,403.70	20,000.00	78,191.37	0.00	33,212.33
133	954	C	3/28/04		Employer - reimb.	166.44	111,570.14	0.00	78,191.37	166.44	33,378.77
134	954	I	3/31/04		Interest	422.09	111,992.23	295.81	78,487.18	126.28	33,505.05
135	954	C	4/7/04		To Dreyfus #9696	(105,000.00)	6,992.23	(71,494.95)	6,992.23	(33,505.05)	0.00
136	954	L	5/6/04		From Dreyfus #9696	12,000.00	18,992.23	0.00	6,992.23	12,000.00	12,000.00
137	954	HT	5/10/04		Sale of Hartzell	407,124.95	426,117.18	333,211.09	340,203.32	73,913.86	85,913.86
138	954	C	5/10/04		To Chase #2928 (Hartzell)	(12,000.00)	414,117.18	0.00	340,203.32	(12,000.00)	73,913.86
139	954	C	5/26/04		To Dreyfus #9696	(100,000.00)	314,117.18	(26,086.14)	314,117.18	(73,913.86)	0.00
140	954	C	5/26/04		To Calvert #2099	(200,000.00)	114,117.18	(200,000.00)	114,117.18	0.00	0.00
141	954	C	5/31/04		To Chase #2928	(102,000.00)	12,117.18	(102,000.00)	12,117.18	0.00	0.00
142	954	I	6/30/04		Interest	468.17	12,585.35	468.17	12,585.35	0.00	0.00

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See Community / Separate Property Balance Sheet Note 4 - Mount Holyoke Ave.

See Calculation of Community / Separate Property Allocation for the Hartzell Street Property Line 13 - Allocation of Proceeds

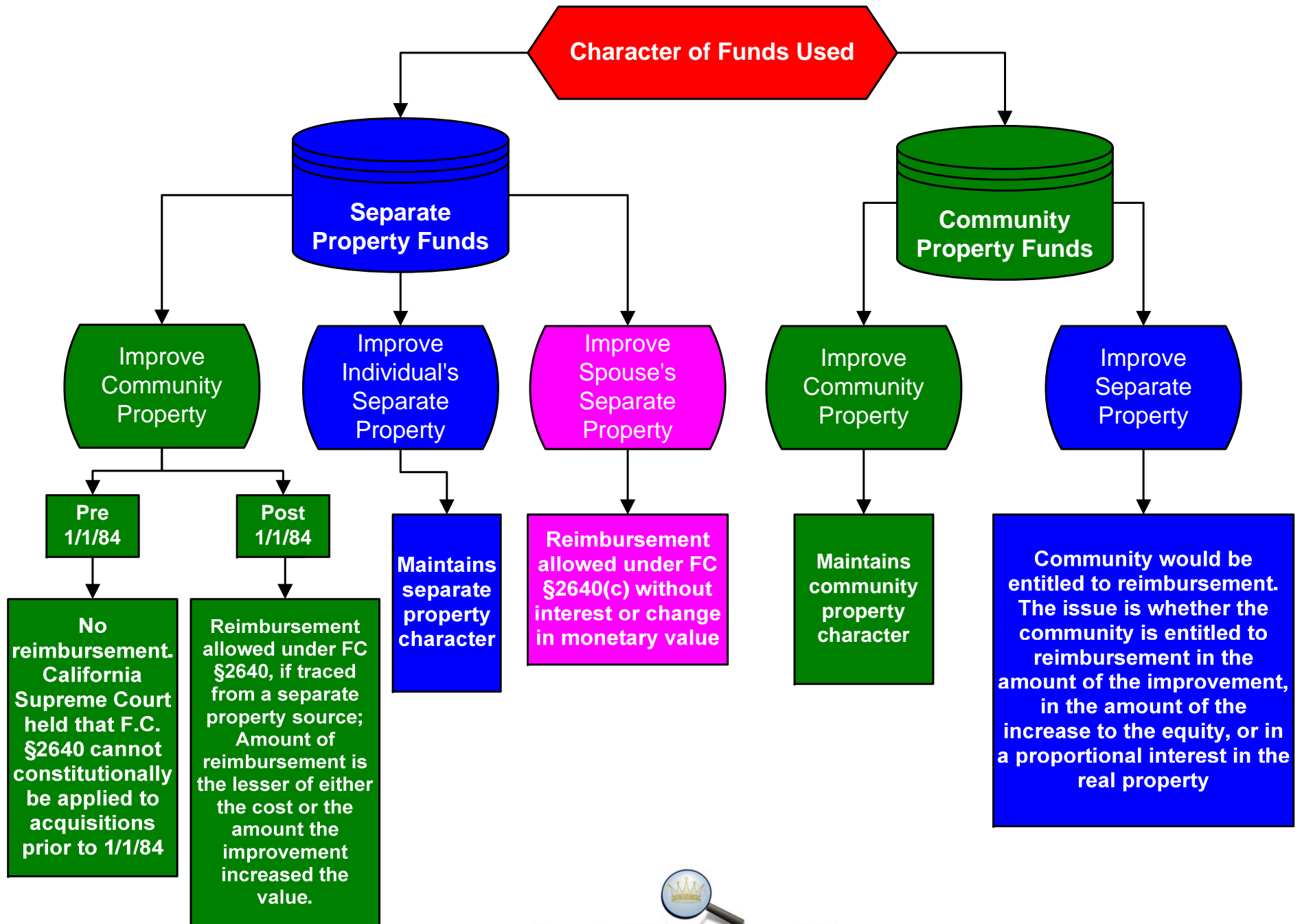
T R A C I N G

Line No.	A/C Code	S/C	Date	Shares	Description	Transaction Amount	Account Balance	Cash / Money Funds				Stock and Bonds		R.Owen Separate		Community Property		Line No.		
								Amount	Balance	R.Owen S/P	Balance	C/P	C/P Balance	Amount	Balance	Transaction	Balance		Transaction	Balance
970	515	M179	6/21/04	Bot	1.400	UTD Dominion Realty - M179	19,950	223,415		151,715	123,140		28,576	19,950	71,699	0	123,140	19,950	100,275	970
971	515	M180	6/22/04	Bot		Royce Value Trust - M180	(50,000)	173,415		101,715	101,715	(21,424)	0	71,699	71,699	(21,424)	101,715	(28,576)	71,699	971
972	515	M180	6/22/04	Bot	50.000	Royce Value Trust - M180	50,000	223,415		101,715	101,715		0	50,000	121,699	21,424	123,140	28,576	100,275	972
973	515	M181	6/22/04	Bot		Santa Fe Pacific Gold - M181	(14,000)	209,415		87,715	87,715	(14,000)	0	121,699	121,699	(14,000)	109,140	0	100,275	973
974	515	M181	6/22/04	Bot	1.000	Santa Fe Pacific Gold - M181	14,000	223,415		87,715	87,715		0	14,000	135,699	14,000	123,140	0	100,275	974
975	515	M179	6/22/04			Realized Gain / (Loss) - UTD	(62)	223,353		87,715	87,715		0	(62)	135,638	0	123,140	(62)	100,213	975
976	515	M179	6/22/04	Sold		UTD Dominion Realty	19,888	243,241	19,888	107,604	0	87,715	19,888	135,638	0	123,140	19,888	120,102	120,102	976
977	515	M179	6/22/04	Sold	(1.400)	UTD Dominion Realty	(19,888)	223,353		107,604	107,604		0	(19,888)	115,749	0	123,140	(19,888)	100,213	977
978	515	M180	6/23/04			Realized Gain / (Loss) - Royce	3	223,356		107,604	107,604		0	3	115,752	1	123,141	2	100,215	978
979	515	M180	6/23/04	Sold		Royce Value Trust	50,003	273,359	50,003	157,607	21,426	109,141	28,577	48,466	115,752	21,426	144,567	28,577	128,792	979
980	515	M180	6/23/04	Sold	(5.000)	Royce Value Trust	(50,003)	223,356		157,607	109,141		0	(50,003)	65,749	(21,426)	123,141	(28,577)	100,215	980
981	515	M181	6/24/04			Realized Gain / (Loss) - Santa Fe	520	223,876		157,607	109,141		0	520	66,269	520	123,661	0	100,215	981
982	515	M181	6/24/04	Sold		Santa Fe Pacific Gold	14,520	238,395	14,520	172,127	14,520	123,661	0	48,466	66,269	14,520	138,180	0	100,215	982
983	515	M181	6/24/04	Sold	(1.000)	Santa Fe Pacific Gold	(14,520)	223,876		172,127	123,661		0	(14,520)	51,749	(14,520)	123,661	0	100,215	983
984	515	I	6/24/04	Div		Share Dividend - CMA Muni Money	274	224,150	274	172,401	151	123,812	123	48,588	51,749	151	123,812	123	100,338	984
985	515	I	6/24/04	Div		Cash Dividend - CMA Muni Money	1	224,151	1	172,401	0	123,813	0	48,589	51,749	0	123,813	0	100,338	985
986	515	M10	6/24/04			Unrealized Gain / (Loss) - Castle	(1,875)	222,276		172,401	123,813		0	(1,875)	49,874	0	123,813	(1,875)	98,463	986
987	515	M177	6/24/04			Unrealized Gain / (Loss) - East Bay	(320)	221,955		172,401	123,813		0	(320)	49,554	0	123,813	(320)	98,143	987
988	515	M178	6/24/04			Unrealized Gain / (Loss) - San Bern	(602)	221,353		172,401	123,813		0	(602)	48,952	0	123,813	(602)	97,541	988
989	515	C	6/28/04	Bot		Total S A Sponsored - M182	(14,005)	207,349	(14,005)	158,397	0	123,813	(14,005)	34,584	48,952	0	123,813	(14,005)	83,536	989
990	515	M182	6/28/04	Bot	500	Total S A Sponsored - M182	14,005	221,353		158,397	123,813		0	14,005	62,957	0	123,813	14,005	97,541	990
991	515	C	6/29/04	Bot		James R Dep - M183	(10,350)	211,003	(10,350)	148,047	0	123,813	(10,350)	24,234	62,957	0	123,813	(10,350)	87,191	991
992	515	M183	6/29/04	Bot	600	James R Dep - M183	10,350	221,353		148,047	123,813		0	10,350	73,307	0	123,813	10,350	97,541	992
993	515	M183	6/29/04			Realized Gain / (Loss) - James R	(140)	221,213		148,047	123,813		0	(140)	73,167	0	123,813	(140)	97,401	993
994	515	M183	6/29/04	Sold		James R Dep	10,210	231,423	10,210	158,256	0	123,813	10,210	34,444	73,167	0	123,813	10,210	107,610	994
995	515	M183	6/29/04	Sold	(600)	James R Dep	(10,210)	221,213		158,256	123,813		0	(10,210)	62,957	0	123,813	(10,210)	97,401	995
996	515	M182	6/29/04			Realized Gain / (Loss) - Total S A	65	221,278		158,256	123,813		0	65	63,022	0	123,813	65	97,465	996
997	515	M182	6/29/04	Sold		Total S A Sponsored Adr	14,070	235,348	14,070	172,326	0	123,813	14,070	48,513	63,022	0	123,813	14,070	111,535	997
998	515	M182	6/29/04	Sold	(500)	Total S A Sponsored Adr	(14,070)	221,278		172,326	123,813		0	(14,070)	48,952	0	123,813	(14,070)	97,465	998
999	515	C	6/30/04	Bot		Capstone Capital Tr - M184	(9,000)	212,278	(9,000)	163,326	0	123,813	(9,000)	39,513	48,952	0	123,813	(9,000)	88,465	999
1000	515	M184	6/30/04	Bot	500	Capstone Capital Tr - M184	9,000	221,278		163,326	123,813		0	9,000	57,912	0	123,813	9,000	97,465	1000
1001	515	M184	7/1/04			Realized Gain / (Loss) - Capstone	(40)	221,238		163,326	123,813		0	(40)	57,912	0	123,813	(40)	97,425	1001
1002	515	M184	7/1/04	Sold		Capstone Capital Tr Inc	8,960	230,198	8,960	172,286	0	123,813	8,960	48,473	57,912	0	123,813	8,960	106,385	1002
1003	515	M184	7/1/04	Sold	(500)	Capstone Capital Tr Inc	(8,960)	221,238		172,286	123,813		0	(8,960)	48,952	0	123,813	(8,960)	97,425	1003

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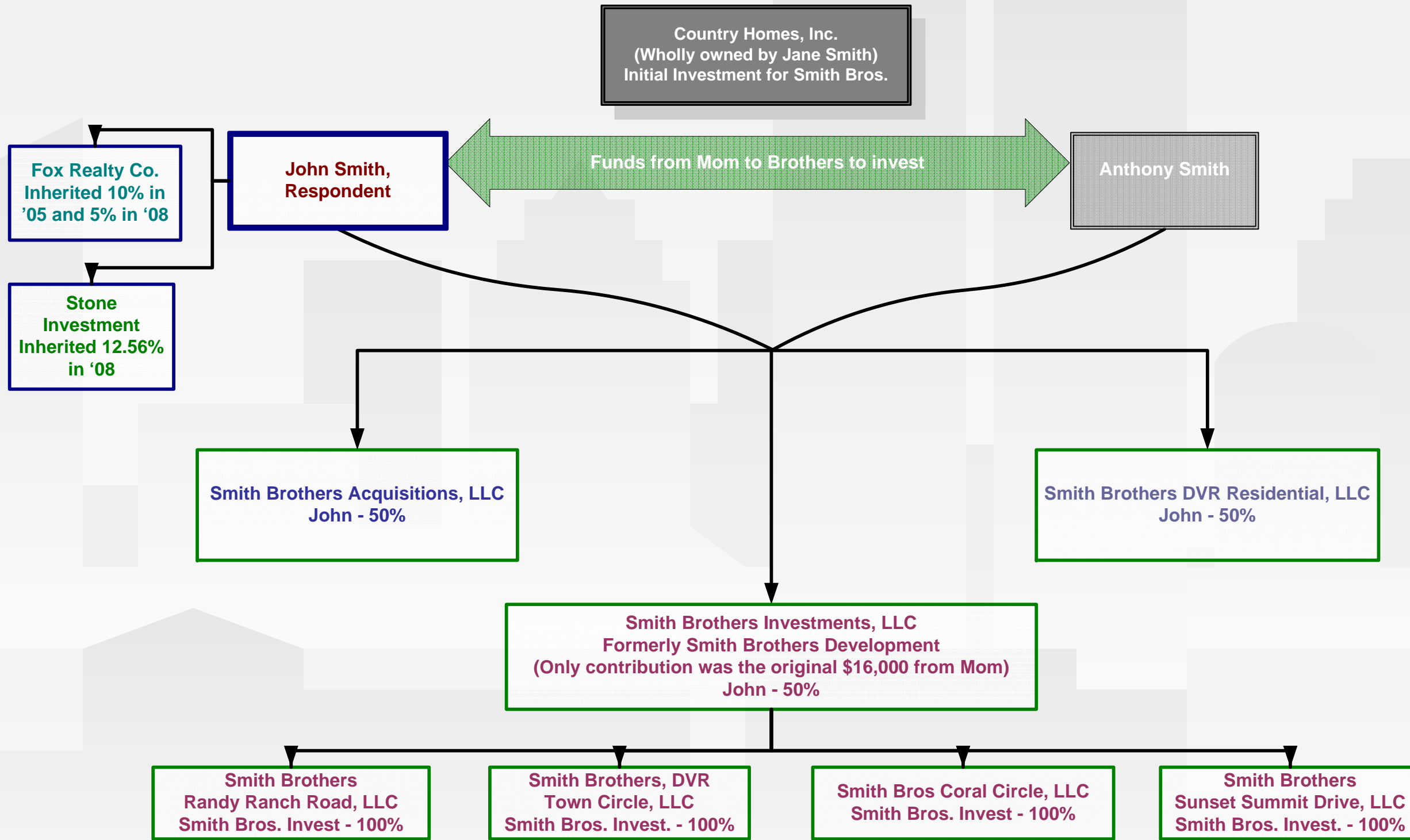
See Schedule of Community /
Separate Property Assets Section II.
Securities - Last Line

Real Property Improvement Flow Chart



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Legend:
[Blue Box] Entities inherited
[Green Box] Entities acquired from funds received from Mother