

## Memorandum 92-35

Subject: Study F-1000 - Comments for Family Code and Conforming Changes

Attached to this memorandum are drafts of the Comments for AB 2650, the Family Code bill, and AB 2641, the conforming revisions bill. This is the set of materials currently being distributed to persons interested in the Family Code project. The staff is currently in the process of revising and making technical corrections to the Comments to reflect the bills as amended. AB 2641 was amended in the Assembly on March 19, 1992. AB 2650 was amended in the Assembly on March 23, 1992. (Copies of the bills accompany Memorandum 92-32.) In addition, further amendments are being prepared. We will conform the Comments to these amendments. The final versions of the Comments will be provided to interested persons and sent to legal publishers for printing in their annotated codes. Commission approval of the Comments is requested at this time, subject to staff revisions and corrections.

Respectfully submitted,

Pamela K. Mishey  
Staff Attorney

# California Law Revision Commission

Staff Working Draft

## Comments to the Family Code (AB 2650)

1992 (in progress)

*These Comments are provided for the convenience of persons reviewing the Family Code bill, Assembly Bill 2650 (Speier), as amended in Assembly, March 23, 1992. The Comments are not final and have not been approved by the Commission.*

*The Commission staff intends to update these Comments from time to time. This material supersedes the December 1991 Staff Working Draft of the Family Code.*

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## DIVISION 1. PRELIMINARY PROVISIONS AND DEFINITIONS

### PART 1. PRELIMINARY PROVISIONS

#### § 1. Title of code

**Comment.** Section 1 is a new provision and is comparable to Civil Code Sections 1 and 21. This section is a standard provision found in many other codes. See, e.g., Bus. & Prof. Code § 1; Evid. Code § 1; Prob. Code § 1; Veh. Code § 1.

#### § 2. Continuation of existing law

**Comment.** Section 2 is a new provision and is comparable to Civil Code Section 5. This section is a standard provision found in many other codes. See, e.g., Bus. & Prof. Code § 2; Corp. Code § 2; Prob. Code § 2(a); Veh. Code § 2. See also Gov't Code §§ 9604 (construction of restatements and continuations), 9605 (construction of amended statutory provision).

A number of terms and phrases are used in the Comments to the sections of the Family Code to indicate the sources of the sections and to describe how they compare with prior law. The following discussion is intended to provide guidance in interpreting the terminology most commonly used in the Comments.

(1) *Continues without change.* A new provision "continues" a former provision "without change" if the two provisions are identical or nearly so. In some cases, there may be insignificant technical differences, such as where punctuation is changed without a change in meaning. Some Comments may describe the relationship by simply stating that the Family Code provision "continues" or is "the same as" a former provision, or is "the same as" a provision of a uniform act.

(2) *Continues without substantive change.* A new provision "continues" a former provision "without substantive change" if the substantive law remains the same but the language differs to an insignificant degree.

(3) *Restates without substantive change.* A new provision "restates" a former provision "without substantive change" if the substantive law remains the same but the language differs to a significant degree. Some Comments may describe the new provision as being the "same in substance."

(4) *Exceptions, additions, omissions.* If part of a former provision is "continued" or "restated," the Comment may say that the former provision is continued or restated but also note the specific differences as "exceptions to," "additions to," or "omissions from" the former provision.

(5) *Generalizes, broadens, restates in general terms.* A new provision may be described as "generalizing," "broadening," or "restating in general terms" a provision of prior law. This description means that a limited rule has been expanded to cover a broader class of cases.

(6) *Supersedes, replaces.* A provision "supersedes" or "replaces" a former provision if the new provision deals with the same subject as the former provision but treats it in a significantly different manner.

(7) *New.* A provision is described as "new" where it has no direct source in prior statutes.

(8) *Drawn from, similar to, consistent with.* A variety of terms are used to indicate a source for a new provision, typically a source other than California statutes. For example, a provision may be "drawn from" a uniform act, model code, or the statutes of another state. In these cases, it may be useful to consult any available commentary or interpretation of the source from which the new provision is drawn for background information.

(9) *Codifies.* A Comment may state that a new provision "codifies" a case-law rule that has not previously been enacted into statutory law.

(10) *Makes clear, clarifies.* A new provision may be described as "making clear" a particular rule or "clarifying" a rule as a way of emphasizing the rule, particularly if the situation under prior law was doubtful or contradictory.

(11) *Statement in Comment that section is "comparable" to another section.* A Comment may state that a provision is "comparable" to another provision. If the Comment to a section notes that another section is "comparable," that does not mean that the other section is the same or substantially the same. The statement is included in the Comment so that the statute user is alerted to the other section and can review the cases under that section for possible use in interpreting the section containing the statement in the Comment.

### § 3. Construction of provision drawn from uniform act

**Comment.** Section 3 generalizes former Civil Code Sections 5003, 5150(1)(i), and 5301, Code of Civil Procedure Section 1651, and Evidence Code Section 891. This section expands the uniform construction rule to the Uniform Parentage Act which formerly lacked a uniform construction provision. Provisions of the Family Code drawn from uniform acts include:

Uniform Premarital Agreement Act (§§ 1600-1617).

Uniform Divorce Recognition Act (§§ 2090-2093).

Uniform Child Custody Jurisdiction Act (§§ 3400-3425).

Uniform Reciprocal Enforcement of Support Act (§§ 4800-4854).

Uniform Act on Blood Tests to Determine Paternity (§§ 7550-7557).

Uniform Parentage Act (§§ 7600-7750).

See also Sections 7900-7910 (Interstate Compact on Placement of Children).

The former Uniform Civil Liability for Support Act has not been continued as a uniform act. For the disposition of the former sections see the Comments to Sections 3550, 3551, 3554, 3651, 3900, 3910(a), 4000, 4002, 4005(a), 4300, 4303, 4320, 4400, 4402, 4403, 4404, 4405.

### § 4. Transitional provision for amendments, additions, and repeals

**Comment.** Section 4 is a new provision and is comparable to Probate Code Section 3. This section provides general transitional rules applicable to the Family Code. This section applies both to the act that enacted the Family Code and to any later act that changes the code, whether the change is effectuated by amendment, addition, or repeal of a provision of the code.

The rules stated in Section 4 are general provisions that apply absent a special rule stated in the new law. Special rules may defer or accelerate application of the new law despite the general rules stated in Section 4. See subdivision (b).

The general rule prescribed in subdivision (c) is that a new law applies immediately on its operative date to all matters, including pending proceedings. The general rule is qualified by the exceptions listed in subdivision (d) (contents, execution, and notice of papers and documents are governed by the law applicable when the paper or document was filed), subdivision (e) (orders are governed by the law applicable when the order was made, subject to any applicable modification procedures), and subdivision (f) (acts are governed by the law applicable when the act was done).

Where a new law fails to address a matter that occurred before its operative date, subdivision (g) makes clear that old law continues to govern the matter.

Because it is impractical to attempt to deal with all the possible transitional problems that may arise in the application of the new law to various circumstances, subdivision (h) provides a safety-valve that permits the court to vary the application of the new law where there would otherwise be a substantial impairment of procedure or justice. This provision is intended to apply only in the extreme and unusual case, and is not intended to excuse compliance with the basic transitional provisions simply because of minor inconveniences or minor impacts on expectations or other interests.

In addition to governing other substantive provisions, Section 4 also governs itself. It therefore becomes operative on the date the Family Code becomes operative and applies to provisions enacted and operative before, on, or after that date.

**§ 5. Effect of headings in code**

**Comment.** Section 5 is a new provision and is comparable to Probate Code Section 4. This section is a standard provision found in many other codes. See, e.g., Bus. & Prof. Code § 9; Corp. Code § 6; Evid. Code § 5; Gov't Code § 6; Veh. Code § 7.

**§ 6. Construction of code**

**Comment.** Section 6 is a new provision and is comparable to Probate Code Section 6. This section is a standard provision found in many other codes. See, e.g., Bus. & Prof. Code § 8; Corp. Code § 5; Evid. Code § 4; Lab. Code § 5; Veh. Code § 6. See also Section 2 Comment.

**§ 7. Reference to statute includes amendments and additions**

**Comment.** Section 7 is a new provision and is comparable to Probate Code Section 7. This section is a standard provision found in many other codes. See, e.g., Bus. & Prof. Code § 12; Corp. Code § 9; Evid. Code § 6; Gov't Code § 9; Veh. Code § 10. See also Gov't Code § 9604 (construction of restatements and continuations), 9605 (construction of amended statutory provision).

**§ 8. Reference to division, part, chapter, article, section, or part of section**

**Comment.** Section 8 is a new provision and is comparable to Civil Code Section 14(6). This section is a standard provision found in many other codes. See, e.g., Bus. & Prof. Code § 15; Corp. Code § 10; Veh. Code § 11. More recent codes have expanded the section to include additional definitions found in Section 8. See, e.g., Evid. Code § 7; Prob. Code § 8.

**§ 9. Construction of tenses**

**Comment.** Section 9 is a new provision and is comparable to part of Civil Code Section 14. This section is a standard provision found in many other codes. See, e.g., Bus. & Prof. Code § 14; Food & Agric. Code § 19; Lab. Code § 11; Prob. Code § 9; Veh. Code § 12.

**§ 10. Construction of singular and plural**

**Comment.** Section 10 is a new provision and is comparable to part of Civil Code Section 14. This section is a standard provision found in many other codes. See, e.g., Corp. Code § 13; Food & Agric. Code § 21; Lab. Code § 13; Prob. Code § 10; Veh. Code § 14.

**§ 11. Reference to married person includes formerly married person**

**Comment.** Section 11 generalizes former Civil Code Section 4350.5 and adds the terms "spouses," "married persons," and "other comparable term." The former provision applied only to former Part 5 (commencing with Section 4000) of Division 4 of the Civil Code (the former Family Law Act), whereas Section 11 applies to the entire Family Code. The rule stated in Section 11 applies unless the provision or context otherwise requires. See Section 6.

**§ 12. Meaning of "shall" and "may"**

**Comment.** Section 12 generalizes former Code of Civil Procedure Section 1732. The former provision applied only to conciliation proceedings (former Title 11.5 (commencing with Section 1730) of the Code of Civil Procedure, now Division 5 (commencing with Section 1800) of the Family Code), whereas Section 12 applies to the entire Family Code. This section is a standard provision found in many other codes. See, e.g., Bus. & Prof. Code § 19; Corp. Code § 15; Lab. Code § 15; Prob. Code § 12; Veh. Code § 15.

**§ 13. Severability of provisions**

**Comment.** Section 13 generalizes former Civil Code Section 7018 and former Code of Civil Procedure Section 1656. The scope of the former provisions has been expanded to apply to the entire Family Code. The former provisions applied only to the uniform acts of which they were a part, i.e., the Uniform Parentage Act (former Part 7 (commencing with Section 7000) of Division 4 of the Civil Code, now Part 3 (commencing with Section 7600) of Division 12 of the Family Code) and the

Revised Uniform Reciprocal Enforcement of Support Act of 1968 (former Title 10a (commencing with Section 1650) of Part 3 of the Code of Civil Procedure, now Chapter 4 (commencing with 4800) of part 5 of Division 9 of the Family Code). This section is a standard provision found in many other codes. See, e.g., Bus. & Prof. Code § 24; Corp. Code § 19; Food & Agric. Code § 17; Lab. Code § 24; Prob. Code § 11.

## PART 2. DEFINITIONS

### § 50. Application of definitions

**Comment.** Section 50 is a new provision and is comparable to Probate Code Section 20. This section is a standard provision found in many other codes. See, e.g., Corp. Code § 5; Evid. Code § 100; Food & Agric. Code § 25; Veh. Code § 100. See also Sections 11 (reference to married person includes formerly married person), 12 (meaning of "shall" and "may").

### § 55. "Abuse"

**Comment.** Section 55 generalizes former Code of Civil Procedure Section 542(a). The scope of the former provision has been expanded in Section 55 to apply to the entire Family Code. The former provision applied only to the Domestic Violence Prevention Act (former Chapter 4 (commencing with Section 540) of Title 7 of Part 2 of the Code of Civil Procedure, now Division 10 (commencing with Section 5500) of the Family Code). However, the definition of "abuse" in former Code of Civil Procedure Section 542(a) also was adopted by reference in former Civil Code Section 4608, now Family Code Section 3022 (determining best interest of child in custody proceeding). See also Evid. Code § 1107.

### § 57. "Affinity"

**Comment.** Section 57 is a new provision drawn from Code of Civil Procedure Section 17(9).

### § 60. "Cohabitant"; "former cohabitant"

**Comment.** Section 60 generalizes former Code of Civil Procedure Section 542(c). The former provision applied only to the Domestic Violence Prevention Act (former Chapter 4 (commencing with Section 540) of Title 7 of Part 2 of the Code of Civil Procedure, now Division 10 (commencing with Section 5500) of the Family Code), whereas Section 60 applies to the entire Family Code.

### § 65. "Community property"

**Comment.** Section 65 is a new provision included for drafting convenience. See also Section 751 (respective interests of spouses in community property during marriage).

### § 67. "County"

**Comment.** Section 67 is a new provision drawn from part of Civil Code Section 14.

### § 70. "Domestic violence"

**Comment.** Section 70 generalizes former Code of Civil Procedure Section 542(b). The scope of the former provision has been expanded in Section 70 to cover the entire Family Code. The former provision applied only to the Domestic Violence Prevention Act (former Chapter 4 (commencing with Section 540) of Title 7 of Part 2 of the Code of Civil Procedure, now Division 10 (commencing with Section 5500) of the Family Code). However, the definition of "domestic violence" in former Code of Civil Procedure Section 542(b) also was adopted by reference in former Civil Code Sections 4600.1, 4607, 4607.2, and 4608.1. See also Evid. Code § 1107. The definition also appeared to apply to the term "domestic violence" used in former Civil Code Section 4351.6. See also Sections 55 ("abuse" defined), 60 ("cohabitant" and "former cohabitant" defined), 75 ("domestic violence prevention order" defined).



**§ 75. "Domestic violence prevention order"**

**Comment.** Section 75 is a new provision included for drafting convenience. The term "domestic violence prevention order" is used in Sections 213, 2335, 3100, 3101, 3111, 3177, 3192, 5513, 5519 and 7604.

**§ 80. "Employee pension benefit plan"**

**Comment.** Section 80 generalizes former Civil Code Section 4363.3. The former provision applied only to former Part 5 (commencing with Section 4000) of Division 4 of the Civil Code (the former Family Law Act), whereas Section 80 applies to the entire Family Code. For a special definition of "employee benefit plan" see Section 755.

**§ 92. "Family support"**

**Comment.** Section 92 continues portions of the first and second sentences of former Civil Code Section 4811(d) without substantive change and adds language that expands the definition to include family support orders and judgments.

**§ 95. "Income and expense declaration"**

**Comment.** Section 95 generalizes the third paragraph of former Civil Code Section 4357.5(a). Former Section 4357.5 applied only to expedited support orders, whereas Section 95 applies to the entire Family Code. See Cal. R. Ct. 1243 (financial declarations), 1285.50 (income and expense declaration form); Sections 115 (property declaration), 211 (Judicial Council rules for practice and procedure).

**§ 115. "Property declaration"**

**Comment.** Section 115 is a new provision designed to permit easy reference to the property declaration form adopted by the Judicial Council. See Cal. R. Ct. 1243 (financial declarations), 1285.55 (property declaration form); Sections 95 (income and expense declaration), 211 (Judicial Council rules for practice and procedure).

**§ 125. "Quasi-community property"**

**Comment.** Section 125 generalizes former Civil Code Section 4803. The former provision applied only to former Part 5 (commencing with Section 4000) of Division 4 of the Civil Code (the former Family Law Act), whereas Section 80 applies to the entire Family Code.

By defining "quasi-community property" to include all property, wherever situated, that would have been treated as community property had the acquiring spouse been domiciled in California at the time of acquisition, Section 125 ensures that the division of marital property upon judgment of nullity or upon dissolution of the marriage or legal separation will not be controlled by the fortuity of when or where the property was initially acquired. Section 125 makes clear that property of the type described in Sections 771, 772, and 781 is not quasi-community property. For background on former Civil Code Section 4803, see *Recommendation Relating to Quasi-Community Property*, 9 Cal. L. Revision Comm'n Reports 113 (1969).

**§ 127. "Respondent"**

**Comment.** Section 127 is a new provision included for drafting convenience.

**§ 130. "Separate property"**

**Comment.** Section 130 is a new provision included for drafting convenience. See also Sections 2502 (defining "separate property" for purposes of division of community estate), 3515 (defining "separate property" for purposes of support).

**§ 142. "Spousal support"**

**Comment.** Section 142 is a new provision included for drafting convenience. As used in this section, "spouse" refers to persons who are lawfully married to each other and to persons who were

previously lawfully married to each other. See Section 11. As used in a particular provision, this definition does not apply if the provision or context otherwise requires. See Section 50.

**§ 145. "State"**

**Comment.** Section 145 is a new provision drawn from Code of Civil Procedure Section 676.1(12). For special definitions of "state" applicable to specific acts, see Sections 3402(j) (Uniform Child Custody Jurisdiction Act), 4802(j) (Uniform Reciprocal Enforcement of Support Act).

**§ 150. "Support"**

**Comment.** The first and second sentences of Section 150 generalize former Civil Code Section 4390(h). The third sentence of Section 150 is a new provision included for drafting convenience. As used in a particular provision, this all-inclusive definition does not apply if the provision or context otherwise requires. See Section 50.

**§ 155. "Support order"**

**Comment.** Section 155 provides a general definition of "support order" that is drawn from the definition of "support order" provided in the Uniform Reciprocal Enforcement of Support Act, continued in Family Code Section 4802(k), except that the definition provided by Section 155 does not include the word "decree" and the word "termination" has been substituted for "revocation." "Decree" is not used in the Family Code and is equivalent to "judgment." As used in a particular provision, this all inclusive definition does not apply if the provision or context otherwise requires. See Section 50.

## DIVISION 2. GENERAL PROVISIONS

### PART 1. JURISDICTION

#### § 200. Jurisdiction in superior court

**Comment.** Section 200 generalizes provisions found throughout former law. See, e.g., former Civ. Code §§ 65, 197.5, 221.60, 221.72, 222.20, 222.90, 224.45, 224.47, 224.66, 227.40, 227.46, 228.10, 230.20, 233, 233.5, 233.6, 4101, 4102, 4212, 4213, 4306, 4351, 4351.5, 4357, 4359, 4365, 4450, 4503, 4551, 4703, 7007, 7017, 7020; former Code Civ. Proc. §§ 1672.5, 1771; former Prob. Code § 3301. Each of the former sections is continued in the Family Code, but the reference to the "superior" court has been omitted as surplus since Section 200 applies to the entire Family Code.

### PART 2. GENERAL PROCEDURAL PROVISIONS

#### § 210. General rules of practice and procedure

**Comment.** Section 210 is a new provision drawn from Probate Code Section 1000. Section 210 is consistent with prior practice. See Cal. R. Ct. 1206, 1207.

Section 210 provides a default rule that applies in circumstances where there is not a special statutory or court rule applicable to proceedings under this code. The general rule stated in this section is subject to many special provisions in this code and other statutes governing practice and procedure, and also is subject to the rule making power of the Judicial Council. See Section 211 (Judicial Council rules for practice and procedure).

#### § 211. Judicial Council rules for practice and procedure

**Comment.** Section 211 generalizes former Civil Code Section 4001. The former provision applied only to former Part 5 (commencing with Section 4000) of Division 4 of the Civil Code (the former Family Law Act), whereas Section 211 applies to the entire Family Code.

For other provisions relating to Judicial Council rules, see, e.g., Sections 2021, 2025, 2070, 2321. For provisions relating to Judicial Council forms, see, e.g., Sections 95, 115, 2043, 2062, 2250, 2331, 2401, 2402, 3417, 3634, 3668, 3694, 3772, 5295, 5512, 5520. For provisions relating to other Judicial Council matters, see, e.g., Sections 1816 (development of training program), 1850-1852 (duties in connection with statewide coordination of family mediation and conciliation services), 2400 (adjustment of dollar amounts to reflect California Consumer Price Index), 2406 (summary dissolution brochure), 3153 (guidelines for determining eligibility for county payment of counsel), 3161 (uniform standards of practice for mediation). See also Welf. & Inst. Code § 11475.3 (report concerning computer compatible family law forms).

#### § 212. Verification of pleadings

**Comment.** Section 212 generalizes provisions found throughout former law. See, e.g., former Civil Code §§ 64, 206.5, 230.20, 232.9, 4102, 4710. Each of the former sections is continued in the Family Code, but the reference to a "verified" pleading has been omitted as surplus since Section 212 applies to the entire Family Code. Section 212 codifies existing family law practice. See, e.g., Cal. R. Ct. 1281 (petition), 1282 (response), 1285.20 (application for order and supporting declaration). See also Code Civ. Proc. § 446 (verification of pleadings).

#### § 213. Responding party's request for affirmative relief alternative to moving party's requested relief

**Comment.** Subdivision (a) of Section 213 continues former Civil Code Section 4355.6 without substantive change.

Subdivision (b) is new and has been added to state the application of this section. The application of former Section 4355.6 was unclear, because the section did not include any language specifying the proceedings to which the section applied.

See also Section 75 ("domestic violence prevention order" defined).

#### § 214. Private trial

**Comment.** Section 214 generalizes former Civil Code Section 4360. The former provision applied only to former Part 5 (commencing with Section 4000) of Division 4 of the Civil Code (the former Family Law Act), whereas Section 214 applies to the entire Family Code. Section 214 is also made subject to exceptions provided in this code or by court rule. Section 214 provides an exception to the general rule stated by Code of Civil Procedure Section 124 (court proceedings to be public).

Special provisions of the Family Code may provide more restrictive rules that prevail over the rule stated in Section 214. See, e.g., Sections 1818 (mandatory exclusion from conciliation proceedings), 7884 (mandatory exclusion from proceeding to declare child free from parental custody and control), 8611 (mandatory exclusion from adoption proceeding). Particular statutes may provide special rules concerning exclusion of the public from hearings that also prevail over the general rule of Section 214. See, e.g., Sections 591(e) (confidentiality of proceeding for waiver of premarital examinations prior to issuance of marriage license), 7643 (confidentiality of Uniform Parentage Act hearings and records).

#### § 215. Service of notice prerequisite to validity of modification of judgment or subsequent order

**Comment.** Section 215 continues former Civil Code Section 4809 without substantive change and adds "visitation" to the introductory clause. The word "support" has been substituted for "support, maintenance, or education," since "support" includes maintenance and education. See Section 150. References to "decree" have been eliminated.

### PART 3. TEMPORARY RESTRAINING ORDER IN SUMMONS

#### § 231. Application of part

**Comment.** Section 231 is new. This part collects general provisions applicable to any restraining order contained in a summons in the proceedings referred to in this section.

#### § 232. Statement in summons concerning enforcement of order

**Comment.** Section 232 continues without substantive change the first sentence of the sixth paragraph of subdivision (a) and the first sentence of the third paragraph of subdivision (b) of former Code of Civil Procedure Section 412.21.

#### § 233. Enforcement of order

**Comment.** Subdivision (a) of Section 233 continues without substantive change the first part of the second sentences of former Code of Civil Procedure Section 412.21(a) and (b). The word "judgment" has been substituted for "decree."

Subdivision (b) continues without substantive change the fifth paragraph of subdivision (a) and the second paragraph of subdivision (b) of former Code of Civil Procedure Section 412.21.

Subdivision (c) continues without substantive change the second and third sentences of the sixth paragraph of subdivision (a) and the second and third sentences of the third paragraph of subdivision (b) of former Code of Civil Procedure Section 412.21.

#### § 234. Order not evidence of proscribed conduct

**Comment.** Section 234 continues without substantive change the last paragraphs of former Code of Civil Procedure Section 412.21(a) and (b). The phrase "the ex parte temporary restraining order under this part" has been substituted for the former references to "these ex parte orders." This is not

a substantive change since "these ex parte orders" referred to temporary restraining orders in summons and these orders are the subject of "this part."

**§ 235. Modification or revocation of order; other orders**

**Comment.** Section 235 continues without substantive change the second through the last paragraphs of former Code of Civil Procedure Section 412.21(a) and (b). The phrase "this part" has been substituted for the former reference to "this subdivision" and "temporary restraining order provided for in this part" has been substituted for the former reference to "the order." These are not substantive changes, since the former phrases referred to temporary restraining orders in summons and these orders are the subject of "this part."

**PART 4. TEMPORARY RESTRAINING ORDERS AND SUPPORT ORDERS  
ISSUED WITHOUT NOTICE**

**§ 240. Application of provisions of this part**

**Comment.** Section 240 is a new provision drawn from a part of the first sentence of the last paragraph of Code of Civil Procedure Section 527(a).

The provisions of Part 4 (commencing with Section 240) of Division 2 of the Family Code supersede the provisions of Code of Civil Procedure Section 527 insofar as that section formerly applied to the orders listed in Section 240.

See also Section 210 (general rules of practice and procedure); Code Civ. Proc. § 529 (exemption from undertaking requirement).

**§ 241. Granting temporary order without notice**

**Comment.** Section 241 is a new provision drawn from a part of the first sentence of the last paragraph of Code of Civil Procedure Section 527(a). The introductory clause has been added to Section 241 to recognize that Section 5530 provides for the issuance of an order under Division 10 (prevention of domestic violence) on an affidavit showing reasonable proof of a past act of abuse. The reference to a "verified" application has been omitted as surplus. See Section 212 (pleadings to be verified).

**§ 242. Order to show cause**

**Comment.** Section 242 is a new provision drawn, in part, from the second and third sentences of the last paragraph of Code of Civil Procedure Section 527(a).

Subdivisions (a) and (b) also continue without substantive change the second sentences of former Code of Civil Procedure Section 546(a) and former Civil Code Section 7020(a). Subdivision (c) continues without substantive change the third sentences of former Code of Civil Procedure Section 546(a) and former Civil Code Section 7020(a).

**§ 243. Readiness for hearing; continuance; counter-affidavits**

**Comment.** Section 243 is a new provision drawn from the fourth, fifth and sixth sentences of the last paragraph of Code of Civil Procedure Section 527(a). See also Section 240 (application of provisions of this part).

**§ 244. Precedence for hearing and trial**

**Comment.** Section 244 is a new provision drawn from the last two sentences of the last paragraph of Code of Civil Procedure Section 527(a). See also Section 240 (application of provisions of this part).

**§ 245. Reissuance of restraining order**

**Comment.** Section 245 continues former Code of Civil Procedure Section 527(b) without substantive change and expands the scope of the former provision to apply to all orders listed in Section 240. Former Code of Civil Procedure Section 527(b) applied only to a temporary restraining

order issued pursuant to former Code of Civil Procedure Section 546, now Part 3 (commencing with Section 5530) of Division 10 of the Family Code (temporary restraining orders issued pursuant to the Domestic Violence Prevention Law).

#### PART 5. PROVISIONS FOR ATTORNEY'S FEES AND COSTS

##### § 270. Costs and attorney's fees during pendency of proceeding

**Comment.** Section 270 continues former Civil Code Section 4370(a) without substantive change. The phrase "proceeding for dissolution of marriage, for nullity of marriage, or for legal separation of the parties" replaces the former reference to "proceeding under this part." The phrase "proceeding under this part" as used in former Civil Code Section 4370(a) referred to former Part 5 (commencing with Section 4000) of Division 4 of the Civil Code (the former Family Law Act).

Section 272 requires that the award of attorney's fees and costs under Section 270 be just and reasonable under relevant circumstances of the parties. See *In re Marriage of Hublou*, 231 Cal. App. 3d 956, 282 Cal. Rptr. 695 (1991).

Special provisions may govern attorney's fees and costs in particular circumstances. See, e.g., Sections 916 (attorney's fees in enforcing right to reimbursement after division of community property), 1111 (breach of fiduciary duty), 2255 (attorney's fees and costs in proceeding for judgment of nullity of marriage), 2334 (order for attorney's fees during period of continuance for reconciliation), 3027 (attorney's fees in proceeding to recover monetary sanction for false accusation of child abuse or neglect), 3028 (attorney's fees in proceeding to recover compensation for failure to assume caretaker responsibility or for thwarting other parent's visitation or custody rights), 3113, 3150-3153, 3174 (appointment of counsel to represent child in custody or visitation proceeding), 3407 (attorney's fees where custody or visitation proceeding commenced in clearly inappropriate forum), 3408 (attorney's fees where jurisdiction declined by reason of conduct), 3416 (attorney's fees for enforcement of sister state custody order), 3652 (attorney's fees in proceeding to modify or terminate child support order), 4002 (attorney's fees for county enforcement of child support), 4303 (attorney's fees for county enforcement of spousal support), 4403 (attorney's fees for county enforcement of parent's right to support), 4803 (limitation on recovery of attorney's fees in proceeding under Uniform Reciprocal Enforcement of Support Act), 5283(d) (earnings assignment order), 5755, 5805 (attorney's fees in proceeding under Domestic Violence Prevention Law), 6602 (contract for attorney's fees for services in litigation for minor), 7640 (counsel fees and costs under Uniform Parentage Act), 7827, 7860-7864, 7895 (appointment of counsel in proceeding to declare child free from parental custody and control), 8800 (independent adoption).

##### § 271. Notice of application for order

**Comment.** Section 271 continues former Civil Code Section 4370(b) without substantive change. The phrase "proceeding for dissolution of marriage, for nullity of marriage, or for legal separation of the parties" replaces the former reference to "proceeding under this part." The phrase "proceeding under this part" as used in former Civil Code Section 4370(b) referred to former Part 5 (commencing with Section 4000) of Division 4 of the Civil Code (the former Family Law Act).

##### § 272. Award of attorney's fees and costs to be just and reasonable under relative circumstances of parties

**Comment.** Section 272 continues former Civil Code Section 4370.5 without substantive change. In subdivision (b), a reference to Section 4320 has been substituted for the broader reference to former Civil Code Section 4801(a). Section 4320 continues the relevant part of former Civil Code Section 4801(a). See also Sections 65 ("community property" defined in Section 760 *et seq.*), 125 ("quasi-community property" defined), 130 ("separate property" defined in Section 760 *et seq.*).

Subdivision (a) of Section 272 states the general standard for an award of costs and attorney's fees in family law proceedings.

Subdivision (b) lists two important factors the court should consider in making such an award. The factors listed in subdivision (b) are not exclusive, and the court may consider any other proper factors, including the likelihood of collection, tax considerations, and other factors announced in the cases. See, e.g., *In re Marriage of Lopez*, 38 Cal. App. 3d 93, 113 Cal. Rptr. 58 (1974).

Subdivision (c) expressly authorizes the court to order payment from any source that appears proper, including the community and separate estates of the parties. When enacted in 1985 (as former Civil Code Section 4370.5), this provision overruled language in the cases holding, for example, that the court could not require a wife to impair the capital of her separate estate in order to defray her litigation expenses. See, e.g., *In re Marriage of Jafeman*, 29 Cal. App. 3d 244, 105 Cal. Rptr. 483 (1972); *In re Marriage of Hopkins*, 74 Cal. App. 3d 591, 141 Cal. Rptr. 597 (1977).

For background on former Civil Code Section 4370.5, see *Recommendation Relating to Litigation Expenses in Family Law Proceedings*, 18 Cal. L. Revision Comm'n Reports 351 (1986).

**§ 273. Attorney's fees for enforcement of support order or civil penalty for child support delinquency**

**Comment.** Section 273 continues former Civil Code Section 4370(c)-(d) without substantive change. Subdivision (a)(2) of Section 273, continues language that was added by 1991 Cal. Stat. ch. 110, § 4, but chaptered out by 1991 Cal. Stat. ch. 500, § 1. See also Section 3652 (attorney's fees in order modifying or terminating child support order).

**§ 274. Award of attorney's fees and costs based on conduct of party or attorney**

**Comment.** Section 274 continues Civil Code Section 4370.6 without substantive change. See also Section 65 ("community property" defined in Section 760 *et seq.*).

**§ 275. Order for direct payment to attorney**

**Comment.** Section 275 restates former Civil Code Section 4371 without substantive change.

**PART 6. ENFORCEMENT OF JUDGMENTS AND ORDERS**

**§ 290. Methods of enforcement**

**Comment.** Section 290 continues former Civil Code Section 4380 without substantive change and expands the scope of the former provision to apply to the entire Family Code. The former provision applied only to a judgment or order made or entered "pursuant to this part," meaning former Part 5 (commencing with Section 4000) of Division 4 of the Civil Code (the former Family Law Act). The phrase "or decree of the court" has been eliminated. "Order" has been substituted for "order or orders." See Section 10 (singular includes the plural).

The authority granted by Section 290 is subject to the general provisions governing enforcement of judgments and orders and to any special provisions applicable to enforcement of a judgment or order made or entered pursuant to this code. For provisions governing enforcement of support orders, see Part 5 (commencing with Section 4500) of Division 9. For provisions permitting enforcement by writ of execution without prior court approval, see Sections 5100-5101. See also Code Civ. Proc. §§ 683.130 (application for renewal of judgment), 1209-1222 (contempt of court).

For background on former Civil Code Section 4380, see *Recommendation Relating to Prejudgment Attachment*, 11 Cal. L. Revision Comm'n Reports 701, 747 (1973).

**§ 291. Effect of lack of diligence in seeking enforcement**

**Comment.** Section 291 continues the first sentence of former Civil Code Section 4384 without substantive change and expands the scope of the former provision to apply to the entire Family Code. The former provision applied only to a judgment or order made or entered "pursuant to this part," meaning former Part 5 (commencing with Section 4000) of Division 4 of the Civil Code (the former Family Law Act). The phrase "or decree of the court" has been eliminated. The phrase "period

specified in Chapter 5 (commencing with Section 5100) of Part 5 of Division 9" has been substituted for the former reference to the "period specified in Section 4383." This is not a substantive change, since former Civil Code Section 4383 has been continued in Chapter 5 (commencing with Section 5100) of Part 5 of Division 9 of the Family Code.

Nothing in Section 291 precludes the court from permitting enforcement after the period specified in Chapter 5 (commencing with Section 5100) of Part 5 of Division 9 even though diligence is not shown, if the court, in its discretion, determines that enforcement would be equitable in light of all the circumstances of the particular case.

For provisions governing enforcement of support orders, see Part 5 (commencing with Section 4500) of Division 9. For provisions permitting enforcement by writ of execution without prior court approval, see Sections 5100-5101. See also Code Civ. Proc. § 683.130 (application for renewal of judgment).

For background on former Civil Code Section 4384, see *Tentative Recommendation Proposing the Enforcement of Judgments Law*, 15 Cal. L. Revision Comm'n Reports 2001, 2617 (1980).



## DIVISION 3. MARRIAGE

### PART 1. VALIDITY OF MARRIAGE

**§ 300. Marriage relation; consent, license, and solemnization**

**Comment.** Section 300 continues former Civil Code Section 4100 without substantive change. In the final sentence of Section 300, "this division" has been substituted for the broader reference to "this code." This is not a substantive change, since all sections dealing with issuance of a license and solemnization which were contained in the Civil Code are continued in this division of the Family Code.

**§ 301. Capacity of adult to consent to and consummate marriage**

**Comment.** Section 301 continues former Civil Code Section 4101(a) without substantive change.

**§ 302. Capacity of minor to consent to and consummate marriage**

**Comment.** Section 302 continues former Civil Code Section 4101(b) without substantive change. In the introductory part of Section 302, the phrase "as provided in [former] Section 4201" has been omitted and the word "county" has been added. This is not a substantive change, since former Civil Code Section 4201 required filing with the "county" clerk. In subdivision (b), the reference to "superior" court has been omitted as surplus. See Section 200 (jurisdiction in superior court). See also Sections 303 (consent of court where minor has no parent), 353 (requirements for underage applicant for marriage license).

**§ 303. Consent of court where minor has no parent**

**Comment.** Subdivision (a) of Section 303 continues former Civil Code Section 4102 without substantive change. The references to "superior" court and to "verified" application have been omitted as surplus. See Sections 200 (jurisdiction in superior court), 212 (pleadings to be verified).

Subdivision (b) continues former Civil Code Section 4101(c) without substantive change. The word "minor" has been substituted for "person under the age of 18 years." See Section 6500 (minor).

**§ 304. Proof of consent and solemnization**

**Comment.** Section 304 continues former Civil Code Section 4103 without substantive change.

**§ 305. Procedural requirements; effect of noncompliance**

**Comment.** Section 305 continues former Civil Code Section 4200 without substantive change. The introductory clause has been added to recognize the exception provided in Section 306. The word "nonparty" has been substituted for "others than a party."

**§ 306. Requirements for marriage of members of religious society or denomination**

**Comment.** Section 306 continues former Civil Code Section 4216 without substantive change. In the introductory part of this section, "this division" has been substituted for the narrower reference to "this article." This is not a substantive change, since the former article contained the sections relating to solemnization that are continued in this division.

**§ 307. Validity of foreign marriages**

**Comment.** Section 307 continues former Civil Code Section 4104 without substantive change.

**§ 308. Action to have validity of marriage determined**

**Comment.** Section 308 continues former Civil Code Section 4212 without substantive change. The phrase "in the superior court" has been omitted as surplus. See Section 200 (jurisdiction in superior court). See also Prob. Code § 1901 (determination of conservatee's capacity to marry).

## PART 2. MARRIAGE LICENSE AND CERTIFICATE OF REGISTRY

**§ 350. Marriage license required**

**Comment.** Section 350 continues the first part of former Civil Code Section 4201(a) without substantive change.

**§ 351. Contents of license**

**Comment.** Section 351 continues the last part of former Civil Code Section 4201(a) without substantive change.

**§ 352. Denial of license**

**Comment.** Section 352 continues the first sentence of former Civil Code Section 4201(b) without substantive change. The phrase "lacks the capacity to enter into a valid marriage" has been substituted for "is an imbecile, is insane." This revision is consistent with Probate Code Section 1901 (determination of conservatee's capacity to marry).

**§ 353. Underage applicant**

**Comment.** Section 353 restates the second sentence of former Civil Code Section 4201(b) without substantive change. The word "consent" has been substituted for "consent or consents." This is not a substantive change. See Section 10 (singular includes plural). Section 353 requires filing with (rather than "by") the clerk to conform with Section 303 (consent of court where minor has no parent). A reference to Section 302 has been substituted for the broader reference to former Civil Code Section 4101. This is not a substantive change, since the relevant part of the former section is continued at Section 302.

**§ 354. Requiring proof of facts**

**Comment.** Section 354 restates without substantive change the third, fourth, and fifth sentences of former Civil Code Section 4201(b). In subdivision (b), the phrase "the applicants shall sign it" has been substituted for "subscribed by them."

**§ 355. Forms**

**Comment.** Section 355 continues without substantive change former Civil Code Section 4201(c)-(d). In subdivision (b), "the applicants" has been substituted for "the bride and groom" for consistency with other sections in this part. See, e.g., Sections 352, 354.

**§ 356. Expiration of license**

**Comment.** Section 356 continues without substantive change the first sentence of former Civil Code Section 4204.

**§ 357. Duties of county clerk and county recorder**

**Comment.** Section 357 restates without substantive change the second paragraph of former Civil Code Section 4204. In subdivision (c), the phrase "person solemnizing their marriage" has been substituted for "person marrying them" to conform with other sections in this division. See, e.g., Section 420.

**§ 358. Informational brochure**

**Comment.** Section 358 continues former Civil Code Section 4201.5 without substantive change. In subdivision (c), a reference to Section 503 has been substituted for the broader reference to former Civil Code Section 4213. This is not a substantive change, since the relevant part of the former section is continued in Section 503.

**§ 359. Certificate of registry; preparation and filing**

**Comment.** Section 359 restates former Civil Code Section 4202 without substantive change. The phrase "person solemnizing the marriage" has been substituted for "person performing the ceremony" throughout this section for consistency with other sections in this division. See, e.g., Section 420.

**§ 360. Replacement of lost certificate of registry**

**Comment.** Section 360 restates former Civil Code Section 4203 without substantive change.

**PART 3. SOLEMNIZATION OF MARRIAGE****CHAPTER 1. PERSONS AUTHORIZED TO SOLEMNIZE MARRIAGE****§ 400. Persons authorized to solemnize**

**Comment.** Section 400 restates former Civil Code Section 4205 without substantive change. See also Section 402 (official of nonprofit religious institution licensed by county to solemnize marriages).

**§ 401. Commissioner of civil marriages; deputies**

**Comment.** Section 401 continues former Civil Code Section 4205.1 without substantive change.

**§ 402. Officials of nonprofit religious institutions**

**Comment.** Section 402 continues former Civil Code Section 4205.5 without substantive change.

**CHAPTER 2. SOLEMNIZATION OF MARRIAGE****§ 420. Essential element of solemnization**

**Comment.** Subdivision (a) of Section 420 continues former Civil Code Section 4206 without substantive change. Subdivision (b) continues former Civil Code Section 4206.5 without substantive change.

**§ 421. Determining correctness of facts stated in license**

**Comment.** Section 421 restates former Civil Code Section 4207 without substantive change.

**§ 422. Statement of person solemnizing marriage**

**Comment.** Section 422 continues former Civil Code Section 4208(a) without substantive change.

**§ 423. Return of license and statement to local registrar**

**Comment.** Section 423 continues former Civil Code Section 4208(b) without substantive change.

**§ 424. Issuance of marriage certificate**

**Comment.** Section 424 continues former Civil Code Section 4209 without substantive change.

**§ 425. Unrecorded marriage; filing license and certificate of declaration of marriage**

**Comment.** Section 425 continues former Civil Code Section 4210 without substantive change. In the final sentence of this section, the phrase "with the local registrar of marriages of the county in which the license was issued" has been substituted for "in the manner specified in subdivision (b) of Section 4216." Former Civil Code Section 4216(b), now Family Code Section 306(b), requires the filing within four days after the ceremony. This requirement is not relevant to a "previously contracted" marriage under Section 425.

**PART 4. CONFIDENTIAL MARRIAGE****CHAPTER 1. GENERAL PROVISIONS****§ 500. Requirements for confidential marriage generally**

**Comment.** Section 500 continues the first sentence of former Civil Code Section 4213(a) without substantive change.

**§ 501. Application by parties for and issuance of confidential marriage license**

**Comment.** Section 501 continues the second sentence of former Civil Code Section 4213(a) without substantive change.

**§ 502. Issuance of license where party unable to personally appear**

**Comment.** Section 502 continues former Civil Code Section 4213.1 without substantive change. The phrase "person solemnizing the marriage" has been substituted for "person performing the ceremony" for consistency with other sections in this division. See, e.g., Section 420.

**§ 503. Issuance of license on request of approved notary public**

**Comment.** Section 503 continues the first two sentences of former Civil Code Section 4213(b) without substantive change.

**§ 504. Duration of license; restriction on use**

**Comment.** Section 504 generalizes the third sentence of subdivision (a) and the last sentence of subdivision (b) of former Civil Code Section 4213.

**§ 505. Form of confidential marriage license; form to include certificate of marriage and affidavit**

**Comment.** Section 505 continues without substantive change the last paragraph of subdivision (a) and all of subdivision (i) of former Civil Code Section 4213. In subdivision (c), the phrase "person solemnizing the marriage" has been substituted for "person performing the ceremony" for consistency with other sections in this division. See, e.g., Section 420.

**§ 506. Preparation and filing of marriage certificate**

**Comment.** Section 506 continues the fourth, fifth, and sixth sentences of former Civil Code Section 4213(a) without substantive change. The phrase "person solemnizing the marriage" has been substituted for "person performing the ceremony" throughout this section for consistency with other sections in this division. See, e.g., Section 420.

**§ 507. Delivery of copy of certificate to parties**

**Comment.** Section 507 continues without substantive change the first sentence of the second paragraph of former Civil Code Section 4213(a). The phrase "person solemnizing the marriage" has been substituted for "person performing the ceremony" for consistency with other sections in this division. See, e.g., Section 420.

**§ 508. Application for certified copy of certificate**

**Comment.** Section 508 continues without substantive change the last sentence of the second paragraph of former Civil Code Section 4213(a). The phrase "person solemnizing the marriage" has been substituted for "person performing the ceremony" for consistency with other sections in this division. See, e.g., Section 420.

**§ 509. Issuance of certified copy of certificate**

**Comment.** Section 509 continues former Civil Code Section 4213(g) without substantive change.

**§ 510. Replacement of lost certificate**

**Comment.** Section 510 continues former Civil Code Section 4213(h) without substantive change. The phrase "confidential marriage certificate" has been substituted for "certificate furnished pursuant to this section." This is not a substantive change, since the certificates furnished pursuant to former Civil Code Section 4213 are confidential marriage certificates.

**§ 511. Record of confidential marriage; disclosing information concerning confidential marriage**

**Comment.** Subdivision (a) of Section 511 continues without substantive change the last sentence of the first paragraph of former Civil Code Section 4213(a). The reference to "superior" court has been omitted as surplus. See Section 200 (jurisdiction in superior court).

Subdivision (b) continues former Civil Code Section 4213.2 without substantive change.

Subdivision (c) continues former Civil Code Section 4213(f) without substantive change. The reference to "superior" court has been omitted as surplus. See Section 200 (jurisdiction in superior court).

Subdivision (d) continues former Civil Code Section 4213(e) without substantive change. The phrase "filed after January 1, 1982" has been omitted as obsolete.

#### CHAPTER 2. APPROVAL OF NOTARIES TO AUTHORIZE CONFIDENTIAL MARRIAGES

##### § 530. Only approved notary may authorize confidential marriage

**Comment.** Section 530 continues former Civil Code Section 4213(c)(1) and (d) without substantive change.

##### § 531. Application by notary for approval to authorize confidential marriages

**Comment.** Subdivisions (a) and (b) of Section 531 continue former Civil Code Section 4213(c)(2) without substantive change. Subdivision (c) is new and is drawn from the first sentence of former Civil Code Section 4213(c)(3).

##### § 532. Required course of instruction before approval

**Comment.** Section 532 continues former Civil Code Section 4213(c)(5) without substantive change.

##### § 533. Approval valid one year; renewal

**Comment.** The first sentence of Section 533 continues the second sentence of former Civil Code Section 4213(c)(3) without substantive change. The second sentence is new and is drawn from the third sentence of former Civil Code Section 4213(c)(3).

##### § 534. List of notaries approved to authorize confidential marriages

**Comment.** Section 534 continues former Civil Code Section 4213(c)(6) without substantive change.

##### § 535. Suspending or revoking approval of notary

**Comment.** Section 535 continues former Civil Code Section 4213(c)(4) and (c)(7) without substantive change. In subdivision (b), "this division" has been substituted for the narrower reference to "this article." This is not a substantive change, since the sections in the former article are continued in this division and the other sections in this division do not impose any new obligations on notaries. In the third sentence of subdivision (b), the provision for retaining fees is new and is drawn from the last sentence of former Civil Code Section 4213(c)(3), now Family Code Section 536(c).

##### § 536. Fees; use of money received

**Comment.** Section 536 continues without substantive change the first and last two sentences of former Civil Code Section 4213(c)(3).

#### PART 5. PREMARITAL EXAMINATION

##### § 580. Physician's certificate required as prerequisite to obtaining marriage license

**Comment.** Section 580 continues without substantive change the first part of the first sentence of former Civil Code Section 4300(a). The phrase "licensed physician and surgeon" has been substituted for "duly licensed physician" for consistency with Business and Professions Code Section 2050. See also Sections 500 & 591 (when health certificate not required).

##### § 581. Statement in certificate concerning standard serological test

**Comment.** Section 581 continues without substantive change the last part of the first sentence of former Civil Code Section 4300(a). The phrase "physician and surgeon" has been substituted for "physician." See Section 580 Comment. See also Section 589 (standard serological test).

**§ 582. Statement concerning rubella**

**Comment.** Section 582 continues former Civil Code Section 4300(b) without substantive change.

**§ 583. Statement that HIV test was offered**

**Comment.** Section 583 continues former Civil Code Section 4300(c)-(d) without substantive change.

**§ 584. Capacity to consent to examinations and tests**

**Comment.** Section 584 continues the first sentence of former Civil Code Section 4300(e) without substantive change.

**§ 585. Information to be provided to laboratory**

**Comment.** Section 585 continues the last sentence of former Civil Code Section 4300(e) without substantive change. The phrase "physician and surgeon" has been substituted for "physician. See Section 580 Comment.

**§ 586. Laboratory statement**

**Comment.** Section 586 continues former Civil Code Section 4301 without substantive change. The phrase "physician and surgeon" has been substituted for "physician. See Section 580 Comment.

**§ 587. Certificate forms from other states**

**Comment.** Subdivision (a) of Section 587 continues without substantive change the first sentence of the first paragraph of former Civil Code Section 4303. Subdivision (b) continues the last paragraph of former Civil Code Section 4303 without substantive change.

**§ 588. Certificate forms from armed forces**

**Comment.** Section 588 continues without substantive change the last sentence of the first paragraph of former Civil Code Section 4303.

**§ 589. Standard serological test; approved laboratory; checking accuracy of tests**

**Comment.** Section 589 continues former Civil Code Section 4304 without substantive change. In subdivision (a), the phrase "made by an approved laboratory" has been added for clarity. In subdivision (c), the phrase "any place in the state" has been substituted for "any district in the state."

**§ 590. Submission of laboratory reports or records; destruction of copies of old reports**

**Comment.** Section 590 continues former Civil Code Section 4305 without substantive change.

**§ 591. Court waiver of examination and test requirements; confidential proceedings; no court fee required**

**Comment.** Section 591 restates former Civil Code Section 4306 without substantive change. In subdivision (b), the word "certificate" has been substituted for "certificate or certificates." This is not a substantive change. See Section 10 (singular includes plural). In subdivision (e), the reference to "superior" court has been omitted as surplus. See Sections 200 (jurisdiction in superior court). See also Section 500 (health certificate not required for confidential marriage).

**§ 592. Filing, preservation, and destruction of certificate forms and court orders**

**Comment.** Section 592 continues former Civil Code Section 4307 without substantive change.

**§ 593. Prohibited acts and criminal penalty**

**Comment.** Section 593 continues former Civil Code Section 4308 without substantive change. The phrase "physician and surgeon" has been substituted for "physician." See Section 580 Comment.

**§ 594. Confidential documents: criminal penalty for unlawful disclosure**

**Comment.** Section 594 continues former Civil Code Section 4309 without substantive change. In subdivision (a), the word "duly" has been omitted as surplus. The language of subdivision (b) has been revised to conform with subdivision (a).

## DIVISION 4. RIGHTS AND OBLIGATIONS DURING MARRIAGE

### PART 1. GENERAL PROVISIONS

#### CHAPTER 1. DEFINITIONS

##### § 700. Leasehold interest in real property defined

**Comment.** Section 700 restates the last sentence of former Civil Code Section 5110 without substantive change, and expands the coverage of the definition to apply to the entire division. The former provision applied only to former Civil Code Section 5110.

#### CHAPTER 2. RELATION OF HUSBAND AND WIFE

##### § 720. Mutual obligations

**Comment.** Section 720 continues former Civil Code Section 5100 without change.

##### § 721. Transactions with each other and third parties; fiduciary relationship of husband and wife

**Comment.** Section 721 continues former Civil Code Section 5103 without substantive change. See Section 1111 (claims and remedies for breach of fiduciary duty). See also Code Civ. Proc. §§ 370 (right of married person to sue without spouse being joined as a party), 371 (right of married person to defend suit for spouse's right).

##### § 722. Methods of dissolution

**Comment.** Section 722 continues former Civil Code Section 4350 without substantive change. In subdivision (b), the phrases "of a court of competent jurisdiction," "of the marriage," and the reference to "decree" have been omitted as surplus.

##### § 723. Tribal marriages and divorces

**Comment.** Section 723 continues former Civil Code Section 5138 without substantive change.

#### CHAPTER 3. PROPERTY RIGHTS DURING MARRIAGE

##### § 750. Methods of holding property

**Comment.** Section 750 continues former Civil Code Section 5104 without substantive change. See also Section 65 ("community property" defined in Section 760 *et seq.*). See also Code Civ. Proc. §§ 370 (right of married person to sue without spouse being joined as a party), 371 (right of married person to defend suit for spouse's right).

##### § 751. Interests of spouses in community property

**Comment.** Section 751 continues the first sentence of former Civil Code Section 5105 without change. The second sentence of former Civil Code Section 5105 has been omitted as surplus. See also Section 65 ("community property" defined in Section 760 *et seq.*). See also Code Civ. Proc. §§ 370 (right of married person to sue without spouse being joined as a party), 371 (right of married person to defend suit for spouse's right).

##### § 752. Interest of spouses in separate property

**Comment.** Section 752 continues the first part of former Civil Code Section 5102(a) without substantive change. "Except as otherwise provided by statute" has been substituted for "[e]xcept as provided in this section." See also Section 130 ("separate property" defined in Section 760 *et seq.*); Code Civ. Proc. §§ 370 (right of married person to sue without spouse being joined as a party), 371 (right of married person to defend suit for spouse's right).

**§ 753. Excluding one spouse from other's dwelling**

**Comment.** Section 753 restates the second part of former Civil Code Section 5102(a) without substantive change.

**§ 754. Limitation on disposition of separate property residence if notice of pendency of proceeding recorded**

**Comment.** Section 754 continues former Civil Code Section 5102(b) without substantive change. See also Section 700 (real property includes leasehold interests in real property).

Section 754 provides a means of restraining transfer or encumbrance of a separate property dwelling for a three-month period during the pendency of separation, annulment, or dissolution proceedings. The restraint applies to voluntary dispositions of the dwelling, as well as involuntary dispositions, such as pursuant to a writ of execution. As to the authority of the court to restrain transfer during pendency of these proceedings, see Section 2035. See also Section 2030 (temporary restraining order in summons). A community property dwelling may not be transferred or encumbered without joinder or consent of both spouses. See Sections 1152 (disposition or encumbrance of personal property family dwelling), 1201 (lease, transfer, or encumbrance of real property).

For background on former Civil Code Section 5102, see *Tentative Recommendation Proposing the Enforcement of Judgments Law*, 15 Cal. L. Revision Comm'n Reports 2001, 2630 (1980).

**§ 755. Payment or refund from employee retirement, death, benefit, or savings plan; discharge from adverse claims**

**Comment.** Section 755 continues former Civil Code Section 5106 without substantive change. In the last sentences of subdivisions (a) and (b), the word "persons" has been substituted for "all persons," since the word "all" was surplus.

**PART 2. CHARACTERIZATION OF MARITAL PROPERTY****CHAPTER 1. COMMUNITY PROPERTY****§ 760. Community property**

**Comment.** Section 760 restates the first part of former Civil Code Section 5110, and extends the definition of community property to include real property situated outside California. The phrase "[e]xcept as otherwise provided by statute" has been substituted for the narrower reference to specific statutory provisions in the former section. The phrase "and property held in trust pursuant to Section 5110.150, is community property" has been eliminated as surplus. See Section 761 (property in certain revocable trusts as community property).

The effect of including out-of-state real property in the definition is that California courts treat it as community property for all purposes, including management and control. Under former law, such property was treated as community property for the purpose of liability for debts and for purposes of division at dissolution of marriage or legal separation. See former Civ. Code § 5120.020 (liability for debts). See also Section 901 Comment. As to division at dissolution, see, e.g., *Roza v. Roza*, 49 Cal. 2d 322, 317 P.2d 11 (1957); *Ford v. Ford*, 276 Cal. App. 2d 9, 80 Cal. Rptr. 435 (1969). The treatment given such property by the courts of the state in which the property is located may depend upon the applicable choice of law rules of the state. See also Section 2660 & Comment (division where community estate includes real property located in another state).

Section 760 states the basic rule that all property acquired during marriage is community property unless it comes within a specified exception. The major exceptions to the basic community property rule are those relating to separate property. See, e.g., Sections 130 ("separate property" defined in Section 760 *et seq.*), 770 (separate property of married person), 771 (earnings and accumulations



while living separate and apart), 772 (earnings and accumulations after judgment of legal separation), 781 (cases where damages for personal injury are separate property).

Section 760 is not an exclusive statement of property classified as community. See, e.g., Sections 761 (property in certain revocable trusts as community property), 780 (damages for personal injury to married person as community property).

See also Sections 65 ("community property" defined in Section 760 *et seq.*), 802 & 803 (presumptions concerning nature of property), 850-853 (transmutation of property), 1500-1620 (marital property agreements).

#### § 761. Property in certain revocable trusts as community property

**Comment.** Section 761 continues former Civil Code Section 5110.150 without change. It should be noted that a transfer in trust by a married person is not exempt from the general limitations on transfers and transmutations by married persons acting alone. See Sections 850-853 (limitations on transmutations), 1151-1153 & 1201 (limitations on transfers).

Although subdivision (a) is intended to be consistent with Revenue Ruling 66-283 in order to obtain community property income tax treatment for the trust property under Internal Revenue Code Section 1014(b)(6), whether the terms of a particular trust are sufficient to obtain such treatment is ultimately a matter of federal law.

One consequence of retention of its community character is that the trust property is subject to claims of creditors and to division at dissolution to the same extent as any other community property. See Sections 910-916 (general rules of liability); Prob. Code § 18200 (creditors' rights against revocable trust during settlor's lifetime). Likewise, the interest of the decedent in the community property is subject to testamentary disposition at death unless a contrary method of disposition is provided in the trust instrument, as is typically the case. Prob. Code § 104. In this situation, the spouses' traditional community property right of testamentary disposition is substantially preserved by the unilateral power of revocation. See subdivision (b). Where the trust requires joint action for revocation, the trust could preserve the power of testamentary disposition by granting the first spouse to die a testamentary power of modification, appointment, or disposition as to the spouse's share of the community property.

Subdivision (b) establishes the presumption that either spouse acting alone may revoke the trust as to the community property. The statute makes clear, however, that a unilateral revocation does not change the community property character of property received by the revoking spouse.

Subdivision (c) makes clear that the trustee may manage the trust community property in the same manner as other trust assets, free from the general limitations on disposition of community property imposed on spouses, unless the trust expressly provides such limitations.

Section 761 is not restrictive and does not provide the exclusive means by which community property may be held in trust without loss of its community character. See subdivision (e).

### CHAPTER 2. SEPARATE PROPERTY

#### § 770. Separate property of married person

**Comment.** Section 770 restates former Civil Code Sections 5107 and 5108 without substantive change. The two former sections (which separately stated the same rule, one in relation to a wife and the other to a husband) have been combined and made gender-neutral. For special definitions of separate property in other contexts, see Sections 2502 (division of property), 3515 (support).

#### § 771. Earnings and accumulations while living separate and apart

**Comment.** Section 771 continues former Civil Code Section 5118 without change.

**§ 772. Earnings and accumulations after judgment of legal separation**

**Comment.** Section 772 continues former Civil Code Section 5119 without substantive change. The phrase "entry of a judgment of legal separation" has been substituted for "the rendition of a judgment decreeing legal separation."

**CHAPTER 3. DAMAGES FOR INJURIES TO MARRIED PERSON****§ 780. Damages for personal injury to married person as community property**

**Comment.** Section 780 is new and is drawn from the last sentence of former Civil Code Section 4800(b)(4). This section continues existing law. See, e.g., *In re Marriage of Devlin*, 138 Cal. App. 3d 804, 807, 189 Cal. Rptr. 1 (1982). See also Code Civ. Proc. § 370 (right of married person to sue without spouse being joined as a party).

**§ 781. Cases where damages for personal injury are separate property**

**Comment.** Section 781 continues former Civil Code Section 5126 without substantive change. In subdivision (a)(1), the phrase "entry of a judgment of legal separation" has been substituted for "rendition of a decree of legal separation." The last paragraph of former Civil Code Section 5126(a), which dealt with retroactive application of the former section, has been omitted as temporary and obsolete.

**§ 782. Injuries to married person by spouse**

**Comment.** Section 782 continues former Civil Code Section 5113 without substantive change. The phrase "not exempt from enforcement of a money judgment" has been substituted for "not exempt from execution," in order to conform to the terminology of the Enforcement of Judgments Law. See, e.g., Code Civ. Proc. § 703.010.

**§ 783. Injuries to married person by third party; extent concurring negligence of spouse allowable as defense**

**Comment.** Section 783 continues former Civil Code Section 5112 without substantive change. See also Code Civ. Proc. § 370 (right of married person to sue without spouse being joined as a party).

**CHAPTER 4. PRESUMPTIONS CONCERNING NATURE OF PROPERTY****§ 802. Presumption not applicable where marriage terminated by dissolution more than four years before death**

**Comment.** Section 802 continues former Civil Code Section 5111 without substantive change.

**§ 803. Property acquired by married woman before January 1, 1975**

**Comment.** Section 803 restates without substantive change the last part of the first paragraph of former Civil Code Section 5110. The second paragraph of former Civil Code Section 5110 has been omitted as obsolete.

**CHAPTER 5. TRANSMUTATION OF PROPERTY****§ 850. Transmutation of property by agreement or transfer**

**Comment.** Section 850 continues former Civil Code Section 5110.710 without substantive change. When enacted in 1984 (as former Civil Code Section 5110.710), this provision codified the basic rule that spouses may transmute the character of community or separate property. See, e.g., *Reppy, Debt Collection from Married Californians: Problems Caused by Transmutations, Single-Spouse Management, and Invalid Marriage*, 18 San Diego L. Rev. 143 (1981).

In addition to the limitations on transmutation provided in Sections 851-853, the spouses are subject to the general rules governing the validity of agreements and transfers, as well as the special rules that control the actions of persons occupying confidential relations with each other. See Section

721. The characterization of community and separate property may be affected by a general marital property agreement, prenuptial or otherwise, as well as by a transmutation of specific property.

For background on former Civil Code Section 5110.710, see *Recommendation Relating to Marital Property Presumptions and Transmutations*, 17 Cal. L. Revision Comm'n Reports 205 (1984); 18 Cal. L. Revision Comm'n Reports 67 (1986).

#### § 851. Fraudulent transfers laws apply

**Comment.** Section 851 continues former Civil Code Section 5110.720 without change. When enacted in 1984 (as former Civil Code Section 5110.720), this provision codified case law. *Cf.* *Bailey v. Leeper*, 142 Cal. App. 2d 460, 298 P.2d 684 (1956) (transfer of property from husband to wife); *Frankel v. Boyd*, 106 Cal. 608, 614, 39 P. 939, 941 (1895) (dictum); *Wikes v. Smith*, 465 F.2d 1142 (1972) (bankruptcy).

See also Civil Code § 3439 *et seq.* (general law regarding fraudulent transfers).

For background on former Civil Code Section 5110.720, see *Recommendation Relating to Marital Property Presumptions and Transmutations*, 17 Cal. L. Revision Comm'n Reports 205 (1984); 18 Cal. L. Revision Comm'n Reports 68 (1986).

#### § 852. Form of transmutation

**Comment.** Section 852 continues former Civil Code Section 5110.730 without change. See also Section 700 (real property includes leasehold interests in real property).

Section 852 imposes formalities on interspousal transmutations for the purpose of increasing certainty in the determination whether a transmutation has in fact occurred. Section 852 makes clear that the ordinary rules and formalities applicable to real property transfers apply also to transmutations of real property between the spouses. See Civ. Code §§ 1091 & 1624 (statute of frauds), 1213-1217 (effect of recording). When enacted in 1984 (as former Civil Code Section 5110.730), this provision overruled case law. See, e.g., *Woods v. Security First Nat'l Bank*, 46 Cal. 2d 697, 701, 299 P.2d 657, 659 (1956). It also overruled prior law that permitted oral transmutation of personal property; however, transmutation by gift of certain personal property was recognized.

For background on former Civil Code Section 5110.730, see *Recommendation Relating to Marital Property Presumptions and Transmutations*, 17 Cal. L. Revision Comm'n Reports 205 (1984); 18 Cal. L. Revision Comm'n Reports 68 (1986).

#### § 853. Effect of will

**Comment.** Section 853 continues former Civil Code Section 5110.740 without change. When enacted in 1984 (as former Civil Code Section 5110.740), this provision reversed the case-law rule that a declaration made in a will as to the character of property may be an effective transmutation of the property before the death of the declarant. See, e.g., *In re Marriage of Lotz*, 120 Cal. App. 3d 379, 174 Cal. Rptr. 618 (1981); *Estate of Wilson*, 64 Cal. App. 3d 786, 134 Cal. Rptr. 749 (1976). Section 853 is consistent with the general concepts that a will is ambulatory and subject to subsequent revocation or modification and does not speak until the testator's death.

For background on former Civil Code Section 5110.740, see *Recommendation Relating to Marital Property Presumptions and Transmutations*, 17 Cal. L. Revision Comm'n Reports 205 (1984).

### PART 3. LIABILITY OF MARITAL PROPERTY

#### CHAPTER 1. DEFINITIONS

#### § 900. Application of definitions

**Comment.** Section 900 continues former Civil Code Section 5120.010 without substantive change. For background on former Civil Code Section 5120.010, see *Recommendation Relating to Liability of Marital Property for Debts*, 17 Cal. L. Revision Comm'n Reports 1 (1984).

**§ 901. "Community estate"**

**Comment.** Section 901 restates former Civil Code Section 5120.020 without substantive change. The former section defined "community property," while Section 901 defines "community estate." "Community estate" is a more precise term for use in this part, since the definition includes not only community property but also quasi-community property. See Section 2501 (defining "community estate" to include both community and quasi-community assets and liabilities, for the purpose of division of marital property).

Section 901 omits the language found in former Civil Code Section 5120.020(a) stating that community property includes real property situated in another state that would be community property if situated in this state. This language is no longer necessary since Section 760 provides that community property includes real property, wherever situated, acquired by a married person during marriage while domiciled in this state. See Section 760 Comment.

See also Sections 65 ("community property" defined in Section 760 *et seq.*), 125 ("quasi-community property" defined), 700 (real property includes leasehold interests in real property), 912 (liability of quasi-community property).

When enacted in 1984 (as former Civil Code Section 5120.020), the inclusion of quasi-community property within the formerly used term "community property" was intended to help implement the policy of Section 912 that quasi-community property is treated as community property rather than separate property for purposes of liability.

For background on former Civil Code Section 5120.020, see *Recommendation Relating to Liability of Marital Property for Debts*, 17 Cal. L. Revision Comm'n Reports 1 (1984).

**§ 902. "Debt"**

**Comment.** Section 902 continues former Civil Code Section 5120.030 without change. For background on former Civil Code Section 5120.030, see *Recommendation Relating to Liability of Marital Property for Debts*, 17 Cal. L. Revision Comm'n Reports 1 (1984).

**§ 903. Time debt "incurred"**

**Comment.** Section 903 continues former Civil Code Section 5120.040 without change. For background on former Civil Code Section 5120.040, see *Recommendation Relating to Liability of Marital Property for Debts*, 17 Cal. L. Revision Comm'n Reports 1 (1984).

**CHAPTER 2. GENERAL RULES OF LIABILITY****§ 910. Community estate liable for debt of either spouse**

**Comment.** Section 910 continues former Civil Code Section 5120.110(a) and (c) without substantive change. The term "community estate" has been substituted for "community property." This is not a substantive change. See Section 901 & Comment. In subdivision (b), the definition of "during marriage" has been limited in application to this section. This is not a substantive change. See Section 911 Comment.

Section 910 makes clear that the community estate is liable for the prenuptial contracts of the spouses. But see Section 911 (liability of earnings of the nondebtor spouse). The nondebtor spouse need not be made a party for the purpose of enforcing a judgment out of the community estate. However, special procedural provisions may apply. See, e.g., Code Civ. Proc. § 706.109 (issuance of earnings withholding order against spouse of judgment debtor). For rules governing liability after division of the community estate, see Section 916. See also Code Civ. Proc. § 371 (right of married person to defend suit for spouse's right).

The introductory and concluding clauses of subdivision (a) make clear that the community estate is liable for all debts of either spouse absent an express statutory exception. Thus, community property under the management and control of one spouse pursuant to Section 1153 (spouse operating

or managing business) or Financial Code Section 851 (one-spouse bank account) or Probate Code 3051 (conservatorship) remains liable for the debts of the other spouse. For an express statutory exception from liability of a community estate, see Section 911 (liability of earnings of nondebtor spouse). See also Welf. & Inst. Code §§ 14006.1-14006.6 (eligibility for Medi-Cal).

Section 915 provides that a child or spousal support obligation that does not arise out of the marriage is to be treated as a debt incurred before marriage. Hence, such an obligation is governed by the provisions of Sections 910 and 911. If property sought to be applied to the satisfaction of a judgment for child support is liable for the payment of the judgment but is shown to be exempt, in determining under Code of Civil Procedure Section 703.070 the extent to which the exempt property nevertheless shall be applied to the satisfaction of the support judgment, the court shall take into account, among other relevant circumstances, all of the other property of the spouses, including the separate property of each and the earnings that are not liable for child support under Sections 910 and 911. Although Code of Civil Procedure Section 703.070 requires the court to take into account property that is not liable under Section 911, Section 703.070 does not make the property described in Section 911 liable for payment of the support judgment. Nothing in Section 911 limits or affects the payment under Article 8 (commencing with Section 708.710) of Chapter 6 of Division 2 of the Code of Civil Procedure of a claim based on a judgment for child support, whether the money to be applied to the claim is owed to the judgment debtor alone or to the judgment debtor and the spouse of the judgment debtor. This is clear because the protection for earnings after payment extends only to earnings deposited in a deposit account that meets the requirements of Section 911.

For background on former Civil Code Section 5120.110, see *Recommendation Relating to Liability of Marital Property for Debts*, 17 Cal. L. Revision Comm'n Reports 1 (1984); 18 Cal. L. Revision Comm'n Reports 56-57 (1986).

#### § 911. Liability of married person's earnings for premarital debt of spouse

**Comment.** Section 911 continues former Civil Code Section 5120.110(b) without substantive change. The term "community estate" has been substituted for "community property." This is not a substantive change. See Section 901 & Comment. The definition of "during marriage" in former Civil Code Section 5120.110(c) is not continued in this section because it was not intended to apply to the rule in this section. See also Section 910 Comment.

When enacted in 1984 (as former Civil Code Section 5120.110), the second sentence of subdivision (a) codified the rule that, for purposes of liability, earnings may not be traced through changes in form. See, e.g., *Pfunder v. Goodwin*, 83 Cal. App. 551, 257 P. 119 (1927).

The second sentence of subdivision (a) also makes clear the extent to which paid earnings remain not liable. The effect of the sentence is to protect a deposit account only where the nonobligor spouse has an account into which only his or her earnings and separate property or property of a third person are deposited (unless the amount of other community estate property deposited in the account is insignificant). In such a situation, it is clear that the nonobligor spouse has carefully set aside his or her earnings and separate property and it is appropriate to continue the protection given the earnings. Where the account is commingled with any significant amount of other property in the community estate (such as the earnings of the other spouse or income from other property in the community estate), the intent to segregate the earnings and separate property is not clear, and hence the protection is not continued. The same reasoning justifies not protecting the account where the obligor spouse has a right to withdraw funds from the account.

For background on former Civil Code Section 5120.110, see *Recommendation Relating to Liability of Marital Property for Debts*, 17 Cal. L. Revision Comm'n Reports 1 (1984); 18 Cal. L. Revision Comm'n Reports 56-57 (1986).

**§ 912. Liability of quasi-community property**

**Comment.** Section 912 continues former Civil Code Section 5120.120 without substantive change.

When enacted in 1984 (as former Civil Code Section 5120.120), this provision reversed existing law which treated quasi-community property as separate property rather than community property for purposes of liability for debts. This change in the law was necessary to effectuate the public policy of the state to achieve sharing of marital assets and liabilities, to promote equal access to credit for both spouses, to treat all residents of the state equally, and to protect the interests of California creditors.

For background on former Civil Code Section 5120.120, see *Recommendation Relating to Liability of Marital Property for Debts*, 17 Cal. L. Revision Comm'n Reports 1 (1984).

**§ 913. Liability of separate property**

**Comment.** Section 913 continues former Civil Code Section 5120.130 without substantive change. The term "community estate" has been substituted for "community property." This is not a substantive change. See Section 901 & Comment. For an exception to the rule of subdivision (b), see Section 914 (liability for necessities).

For background on former Civil Code Section 5120.130, see *Recommendation Relating to Liability of Marital Property for Debts*, 17 Cal. L. Revision Comm'n Reports 1 (1984); 18 Cal. L. Revision Comm'n Reports 57 (1986).

**§ 914. Liability for necessities**

**Comment.** Section 914 continues former Civil Code Section 5120.140 without substantive change. The term "community estate" has been substituted for "community property." This is not a substantive change. See Section 901 & Comment.

Section 914 is an exception to the rule of Section 913 that the separate property of a spouse is not liable for a debt of the other spouse incurred during marriage. The separate property of a spouse may not be subjected to process by necessities creditors of the other spouse unless the spouse is made a party for the purpose of enforcing the liability. See, e.g., *Evans v. Noonan*, 20 Cal. App. 288, 128 P. 794 (1912); *Credit Bureau of Santa Monica Bay Dist. v. Terranova*, 15 Cal. App. 3d 854, 93 Cal. Rptr. 538 (1971).

Subdivision (a)(1) is consistent with Section 4301 (use of separate property for support while living together), but does not require exhaustion of community estate property before separate property of a nondebtor spouse can be reached. But see subdivision (b) (reimbursement). For general provisions governing reimbursement, see Section 920.

Subdivision (a)(2) applies where the spouses are living separate not by agreement, as where one spouse leaves without an agreement between the spouses to live separate and apart. Compare Section 4302, which abrogates the obligation of support between spouses living separate by agreement, unless support is stipulated in the agreement. Nothing in subdivision (a)(2) should be deemed to limit the obligation of a spouse for support pursuant to a court order pendente lite or in a judgment of legal separation of the spouses. A spouse who desires to limit the liability pursuant to subdivision (a)(2), or a spouse who desires a greater support obligation than provided in subdivision (a)(2), may seek a support order, which supersedes liability under subdivision (a)(2).

When enacted in 1984 (as former Civil Code Section 5120.140), subdivision (a)(2) abolished the "station in life" test in determining what is a necessary of life. See, e.g., *Wisnom v. McCarthy*, 48 Cal. App. 697, 192 P. 337 (1920) (maid necessary because of economic and social position of spouses). The separate property of the nondebtor spouse is liable only for debts for the "common" necessities of life of the other spouse while living separate and apart. Cf. *Ratzlaff v. Portillo*, 14 Cal. App. 3d 1013, 92 Cal. Rptr. 722 (1971) ("common" necessary is necessary required to sustain life).

For background on former Civil Code Section 5120.140, see *Recommendation Relating to Liability of Marital Property for Debts*, 17 Cal. L. Revision Comm'n Reports 1 (1984); 18 Cal. L. Revision Comm'n Reports 58-59 (1986).

**§ 915. Liability for support obligation**

**Comment.** Section 915 continues former Civil Code Section 5120.150 without substantive change. The term "community estate" has been substituted for "community property." This is not a substantive change. See Section 901 & Comment.

Subdivision (a) makes clear that a support obligation that arises before the marriage is a prenuptial debt for purposes of liability of marital property. As a result, the general rule is that the separate property of the obligor spouse and the community estate of the marriage is liable for the support obligation, other than the earnings of the non-obligor spouse. See Sections 910 (liability of community estate), 911 (liability of married person's earnings for premarital debt of spouse), 913 (liability of separate property). Subdivision (a) also applies to an extramarital support obligation of a spouse that arises during the marriage.

When enacted in 1984 (as former Civil Code Section 5120.150), subdivision (b) codified the rule of *Weinberg v. Weinberg*, 67 Cal. 2d 557, 432 P.2d 709, 63 Cal. Rptr. 13 (1967), that the community is entitled to reimbursement, but prescribed a fixed measure for the community reimbursement based on the separate income of the obligor spouse. See also *Bare v. Bare*, 256 Cal. App. 2d 684, 64 Cal. Rptr. 335 (1967); *In re Marriage of Smaltz*, 82 Cal. App. 3d 568, 147 Cal. Rptr. 154 (1978).

Subdivision (c) makes clear that, despite the general rule that earnings of the non-obligor spouse are not liable for the support obligation, the earnings of the spouses of both parties may be taken into account by the court in setting the amount of the support obligation. When enacted in 1984 (as former Civil Code Section 5120.150), subdivision (c) codified prior case law. See, e.g., *In re Marriage of Havens*, 125 Cal. App. 3d 1012, 178 Cal. Rptr. 477 (1981).

For background on former Civil Code Section 5120.150, see *Recommendation Relating to Liability of Marital Property for Debts*, 17 Cal. L. Revision Comm'n Reports 1 (1984); 18 Cal. L. Revision Comm'n Reports 59 (1986).

**§ 916. Liability after property division**

**Comment.** Section 916 continues former Civil Code Section 5120.160 without substantive change. In subdivision (a), a reference to Division 7 has been substituted for the narrower reference to former Civil Code Section 4800. This is not a substantive change, since all of the former section is included in Division 7.

Section 916 prescribes rules of liability of former community, quasi-community, or community estate property and former separate property following a division of the property pursuant to a court judgment of separation, dissolution, or later division.

Subdivision (a)(1) states the rule that the rights of a creditor against the property of a debtor are not affected by assignment of the debt to the other spouse for payment pursuant to a property division. A creditor who is not paid may seek to satisfy the debt out of property of the debtor. The debtor in such a case will have a right of reimbursement against the former spouse pursuant to subdivision (b).

When enacted in 1984 (as former Civil Code Section 5120.160), subdivisions (a)(2)-(3) reversed the former case law rule that a creditor may seek enforcement of a money judgment against the former community property in the hands of a nondebtor spouse after dissolution of the marriage. See, e.g., *Bank of America N.T. & S.A. v. Mantz*, 4 Cal. 2d 322, 49 P.2d 279 (1935).

Subdivision (a)(2) makes clear that former community estate property received by the nondebtor spouse at division is liable only if the nondebtor spouse is assigned the debt in division. In the case of a judgment entered after the division of property, the nondebtor spouse must be made a party for due process reasons. If the property division calls for the one spouse to pay the debt and the creditor satisfies the judgment out of property of the other spouse, the other spouse will have a right of

reimbursement pursuant to subdivision (b). Subdivision (a)(2) does not affect enforceability of liens on the property. See, e.g., *Kinney v. Vallentyne*, 15 Cal. 3d 475, 541 P.2d 537, 124 Cal. Rptr. 897 (1975).

Subdivision (b) states the rule as to reimbursement where a debt is satisfied out of the property of a spouse other than the spouse to whom the debt was assigned pursuant to a property division. For general provisions governing reimbursement, see Section 920. This subdivision is not intended to authorize reimbursement if reimbursement is precluded under Title 11 of the United States Code (Bankruptcy) by discharge of the debt in a case concerning the married person's spouse. Cf. *In re Marriage of Clements*, 134 Cal. App. 3d 737, 184 Cal. Rptr. 756 (1982).

For background on former Civil Code Section 5120.160, see *Recommendation Relating to Liability of Marital Property for Debts*, 17 Cal. L. Revision Comm'n Reports 1 (1984); 18 Cal. L. Revision Comm'n Reports 59-60 (1986).

### CHAPTER 3. REIMBURSEMENT

#### § 920. General provisions

**Comment.** Section 920 continues former Civil Code Section 5120.210 without substantive change. In subdivision (a), a reference to Division 7 has been substituted for the narrower reference to former Civil Code Section 4800. This is not a substantive change, since all of the former section is included in Division 7.

Section 920 limits reimbursement rights to a three-year enforceability period after discovery of the application of the property to the satisfaction of the debt, or less if a dissolution occurs before the end of the three-year period. Contrast *Weinberg v. Weinberg*, 67 Cal. 2d 557, 432 P.2d 709, 63 Cal. Rptr. 13 (1967) (community property applied to support payments entitled to reimbursement at dissolution); *In re Marriage of Walter*, 57 Cal. App. 3d 802, 129 Cal. Rptr. 351 (1976) (community property applied to separate tax and mortgage debts entitled to reimbursement at dissolution). Under Section 920, the reimbursement right applies even though the spouse seeking reimbursement may have satisfied or consented to satisfaction of the debt out of a particular type of property, unless the spouse expressly waived in writing the reimbursement right. Contrast *In re Marriage of Smaltz*, 82 Cal. App. 3d 568, 147 Cal. Rptr. 154 (1978) (no reimbursement where community property applied to support payments and no separate property available to make payments).

For background on former Civil Code Section 5120.210, see *Recommendation Relating to Liability of Marital Property for Debts*, 17 Cal. L. Revision Comm'n Reports 1 (1984); 18 Cal. L. Revision Comm'n Reports 60-61 (1986).

### CHAPTER 4. TRANSITIONAL PROVISIONS

#### § 930. Enforcement of debts

**Comment.** Section 930 continues without substantive change former Civil Code Section 5120.320 and former Civil Code Section 5120.310 (operative date). The term "community estate" has been substituted for "community property." This is not a substantive change. See Section 901 & Comment.

Section 930 states the general rule that this part applies to all debts enforced on or after January 1, 1985, regardless of the time they were incurred. For an exception to the general rule, see Section 931 (reimbursement rights).

For background on former Civil Code Sections 5120.310 and 5120.320, see *Recommendation Relating to Liability of Marital Property for Debts*, 17 Cal. L. Revision Comm'n Reports 1 (1984).

#### § 931. Reimbursement rights

**Comment.** Section 931 continues without substantive change former Civil Code Section 5120.330(a) and former Civil Code Section 5120.310 (operative date). Section 931 makes clear that



reimbursement rights provided in this part apply to debts satisfied before as well as after January 1, 1985.

Former Civil Code Section 5120.330(b), which dealt with retroactive application of the former section, has been omitted as obsolete. For background on former Civil Code Section 5120.330, see *Recommendation Relating to Liability of Marital Property for Debts*, 17 Cal. L. Revision Comm'n Reports 1 (1984).

CHAPTER 5. LIABILITY FOR DEATH OR INJURY

§ 1000. Liability for death or injury

**Comment.** Section 1000 continues former Civil Code Section 5122 without substantive change. The term "community estate" has been substituted for "community property." This is not a substantive change. See Section 901 & Comment.

Subdivision (c) limits the order of satisfaction requirement to liabilities not covered by insurance. Subdivision (c) also imposes a seven-year limitation period on any reimbursement right implied by the order of satisfaction requirement. *Cf. In re Marriage of Stitt*, 147 Cal. App. 3d 579, 195 Cal. Rptr. 172 (1983).

For background on former Civil Code Section 5122, see *Recommendation Relating to Liability of Marital Property for Debts*, 17 Cal. L. Revision Comm'n Reports 1 (1984); 18 Cal. L. Revision Comm'n Reports 61 (1986).

PART 4. MANAGEMENT AND CONTROL OF MARITAL PROPERTY

**Staff Note.** At the March 1992 meeting, the Commission approved an amendment to strike Sections 1100-1202 from the bill and add the language of Civil Code Sections 5125, 5125.1, 5127, and 5128 as Family Code Sections 1100-1103. Hence, the Comments to Sections 1100-1202, set out below, are obsolete.

CHAPTER 1. DEFINITIONS AND GENERAL PROVISIONS

Article 1. Definitions

§ 1100. Definitions

**Comment.** Section 1100 is new. Subdivision (a) makes clear that the term "disposition" is used in a broad sense and is not limited to a sale of the property. Subdivision (b) is included for drafting convenience. Subdivision (c) reflects the fact that real and personal property are treated the same in this part except in special cases. A reference to community property means any interest in the property, including the interest of either spouse in the property.

Article 2. General Provisions

§ 1110. Management and control in accordance with general rules governing fiduciary relationships

**Comment.** Section 1110 continues former Civil Code Section 5125(e) without substantive change. See also Prob. Code § 3057 (protection of rights of spouse who lacks legal capacity).

For background on former Civil Code Section 5125, see *Recommendation Proposing the Enforcement of Judgments Law*, 15 Cal. L. Revision Comm'n Reports 2001 (1980); 16 Cal. L. Revision Comm'n Reports 1784-85 (1982); *Recommendation Relating to Technical Revisions in the Trust Law*, 18 Cal. L. Revision Comm'n Reports 1823 (1986).

**§ 1111. Claim and remedies for breach of fiduciary duty**

**Comment.** Subdivision (a) of Section 1111 continues former Civil Code Section 5125.1(a) without substantive change. See also Prob. Code § 3057 (protection of rights of spouse who lacks legal capacity). The phrase "claimant spouse's interest in the community property under Section 751" has been substituted in Section 1111 for the phrase "present undivided one-half interest in the community interest" and the phrase "claimant spouse's interest in the community property" has been substituted for "claimant spouse's undivided one-half interest in the community estate" which was used in former Civil Code Section 5125.1(a). These are not substantive changes, but the changes conform Section 1111 to Section 751 which states the interests of spouses in community property using somewhat different language than was used in former Civil Code Section 5125.1(a).

Subdivision (b) of Section 1111 continues former Civil Code Section 5125.1(g) without substantive change.

Subdivision (c) of Section 1111 continues former Civil Code Section 5125.1(h) without substantive change.

**§ 1112. Court ordered accounting and determination of rights in property**

**Comment.** Section 1112 continues former Civil Code Section 5125.1(b) without substantive change.

**§ 1113. Addition of name of spouse to community property**

**Comment.** Section 1113 continues former Civil Code Section 5125.1(c) without substantive change.

**§ 1114. Provisions governing actions brought under this article**

**Comment.** Section 1114 continues former Civil Code Section 5125.1(d) without substantive change. See also Prob. Code § 3057 (protection of rights of spouse who lacks legal capacity).

**§ 1115. Dispensing with the requirement that other spouse consent**

**Comment.** Section 1115 continues former Civil Code Section 5125.1(e) without substantive change. See also Prob. Code § 3071 (substitute for joinder or consent of both spouses if one or both lack capacity for transaction).

**§ 1116. Independent action authorized**

**Comment.** Section 1116 continues former Civil Code Section 5125.1(f) without substantive change. See also Prob. Code §§ 3057 (protection of rights of spouse who lacks legal capacity), 3101 (proceeding for court order to authorize particular transaction).

**§ 1117. Where married person has conservator or lacks capacity**

**Comment.** Section 1117 continues former Civil Code Section 5128(a) without substantive change. Former Civil Code Section 5128(b) and (c) have been omitted as surplus. See Section 1100 ("management and control" includes disposition).

Section 1117 makes provisions of the Probate Code applicable:

(1) Where one or both spouses has a conservator of the estate or lacks legal capacity to manage and control community property (which includes the disposition of community property). See, e.g., Prob. Code § 3051.

(2) Where one or both spouses has a conservator of the estate or lacks legal capacity for a transaction requiring joinder or consent under Section 1151, 1152, or 1201. See, e.g., Prob. Code § 3071. See also Prob. Code § 3012 (legal capacity).

For background on the provisions of the guardianship-conservatorship law, see *Recommendation Relating to Guardianship-Conservatorship Law*, 14 Cal. L. Revision Comm'n Reports 501 (1978).

**§ 1118. Agency**

**Comment.** Section 1118 is new and is drawn from a provision of former Civil Code Section 5127 (real property joinder requirement may be satisfied by duly authorized agent). Language is added to make clear that one spouse may appoint the other spouse to act as an agent. See also Civ. Code §§ 2400-2514 (powers of attorney).

## CHAPTER 2. COMMUNITY PERSONAL PROPERTY

**§ 1150. Management and control**

**Comment.** Section 1150 continues former Civil Code Section 5125(a) without substantive change. The introductory clause ("Except as otherwise provided by statute") has been substituted for the listing of specific statutory provisions found in the former section. The words "separate property" have been substituted for "separate estate." See also Section 1100 (defining "management and control" to include disposition).

For exceptions to the rule stated in Section 1150, see Sections 761 (property in certain revocable trusts), 1151 (gifts of community personal property without a valuable consideration), 1152 (disposition or encumbrance of family dwelling or household goods), 1153 (community property business), and 1117 (one or both spouses lacking capacity or having conservator). See also Section 700 (personal property does not include a leasehold interest in real property). See also Prob. Code §§ 5100-5407 (multiple-party account held by financial institution).

For background on former Civil Code Section 5125, see *Recommendation Proposing the Enforcement of Judgments Law*, 15 Cal. L. Revision Comm'n Reports 2001 (1980); 16 Cal. L. Revision Comm'n Reports 1784-85 (1982); *Recommendation Relating to Technical Revisions in the Trust Law*, 18 Cal. L. Revision Comm'n Reports 1823 (1986).

**§ 1151. Gifts of community personal property**

**Comment.** Section 1151 continues former Civil Code Section 5125(b) without substantive change. See also Section 700 (personal property does not include a leasehold interest in real property).

For background on former Civil Code Section 5125, see *Recommendation Proposing the Enforcement of Judgments Law*, 15 Cal. L. Revision Comm'n Reports 2001 (1980); 16 Cal. L. Revision Comm'n Reports 1784-85 (1982); *Recommendation Relating to Technical Revisions in the Trust Law*, 18 Cal. L. Revision Comm'n Reports 1823 (1986).

**§ 1152. Disposition or encumbrance of family dwelling or household goods**

**Comment.** Section 1152 continues former Civil Code Section 5125(c) without substantive change. See also Section 700 (personal property does not include a leasehold interest in real property).

For background on former Civil Code Section 5125, see *Recommendation Proposing the Enforcement of Judgments Law*, 15 Cal. L. Revision Comm'n Reports 2001 (1980); 16 Cal. L. Revision Comm'n Reports 1784-85 (1982); *Recommendation Relating to Technical Revisions in the Trust Law*, 18 Cal. L. Revision Comm'n Reports 1823 (1986).

**§ 1153. Community property business**

**Comment.** Section 1153 continues former Civil Code Section 5125(d) without substantive change. For remedies for breach of fiduciary duty, see Section 1111. See also Section 700 (personal property does not include a leasehold interest in real property).

For background on former Civil Code Section 5125, see *Recommendation Proposing the Enforcement of Judgments Law*, 15 Cal. L. Revision Comm'n Reports 2001 (1980); 16 Cal. L. Revision Comm'n Reports 1784-85 (1982); *Recommendation Relating to Technical Revisions in the Trust Law*, 18 Cal. L. Revision Comm'n Reports 1823 (1986).

## CHAPTER 3. COMMUNITY REAL PROPERTY

**§ 1200. Management and control**

**Comment.** Section 1200 continues without substantive change the introductory part of the first sentence of former Civil Code Section 5127. The introductory clause ("Except as otherwise provided by statute") has been substituted for the listing of specific statutory provisions found in the former section.

For exceptions to the rule stated in Section 1200, see Sections 761 (property in certain revocable trusts) and 1117 (one or both spouses lacking capacity or having conservator). See also Section 700 (real property includes leasehold interests in real property).

**§ 1201. Requirement that spouse join in lease, transfer, or encumbrance**

**Comment.** Section 1201 continues without substantive change the last part of the first sentence of former Civil Code Section 5127. The clause "either personally or by duly authorized agent" has been omitted as unnecessary in view of the general provision of Section 1118 that permits a spouse to act by duly authorized agent in the management and control of community property. See also Section 700 (real property includes leasehold interests in real property)

**§ 1202. Limitation of actions**

**Comment.** Section 1202 continues without substantive change part of the second sentence of former Civil Code Section 5127. The part of the second sentence relating to an instrument executed by the husband alone is omitted as obsolete and unnecessary.

## PART 5. MARITAL AGREEMENTS

## CHAPTER 1. GENERAL PROVISIONS

**§ 1500. Effect of premarital and other marital property agreements**

**Comment.** Section 1500 continues former Civil Code Section 5200 without change. See also Sections 1600-1617 (premarital agreements); Prob. Code §§ 140-147 (surviving spouse's waiver of rights).

**§ 1501. Agreements by minors**

**Comment.** Section 1501 continues former Civil Code Section 5201 without change.

**§ 1502. Recording of agreements**

**Comment.** Section 1502 continues former Civil Code Section 5202 without change. See also Section 700 (real property includes leasehold interests in real property).

**§ 1503. Law applicable to premarital agreements made before January 1, 1986**

**Comment.** Section 1503 continues former Civil Code Section 5203 without substantive change.

## CHAPTER 2. UNIFORM PREMARITAL AGREEMENT ACT

## Article 1. Preliminary Provisions

**§ 1600. Short title**

**Comment.** Section 1600 continues former Civil Code Section 5300 without substantive change. Section 1600 is the same as Section 10 of the Uniform Premarital Agreement Act (1983). See also Sections 3 (construction of provision drawn from uniform act). 14 (severability of provisions).

**§ 1601. Application of chapter**

**Comment.** Section 1601 continues former Civil Code Section 5302 without change. Section 1601 is the same as Section 12 of the Uniform Premarital Agreement Act (1983). See also Section 1503 (law applicable to premarital agreements made before January 1, 1986).

**Article 2. Premarital Agreements**

**§ 1610. Definitions**

**Comment.** Section 1610 continues former Civil Code Section 5310 without change. Section 1610 is the same as Section 1 of the Uniform Premarital Agreement Act (1983).

**§ 1611. Formalities; consideration**

**Comment.** Section 1611 continues former Civil Code Section 5311 without change. Section 1611 is the same as Section 2 of the Uniform Premarital Agreement Act (1983). See also Sections 1501 (agreements by minors), 1502 (recording of agreements).

**§ 1612. Subject matter of premarital agreement**

**Comment.** Section 1612 continues former Civil Code Section 5312 without change. Section 1612 is the same as Section 3 of the Uniform Premarital Agreement Act (1983) except that Section 1612 omits the provision of the uniform act providing that the parties to a premarital agreement may contract with respect to "the modification or elimination of spousal support." See also Prob. Code §§ 140-147 (surviving spouse's waiver of rights), 150 (contracts concerning will or succession).

**§ 1613. Agreement becomes effective upon marriage**

**Comment.** Section 1613 continues former Civil Code Section 5313 without change. Section 1613 is the same as Section 4 of the Uniform Premarital Agreement Act (1983).

**§ 1614. Amendment; revocation**

**Comment.** Section 1614 continues former Civil Code Section 5314 without change. Section 1614 is the same as Section 5 of the Uniform Premarital Agreement Act (1983).

**§ 1615. Enforcement**

**Comment.** Section 1615 continues former Civil Code Section 5315 without substantive change. Section 1615 is the same as Section 6(a) and (c) of the Uniform Premarital Agreement Act (1983). Section 6(b) of the uniform act was omitted since it applies to a premarital agreement which modifies or eliminates spousal support. The uniform provision allowing for modification or elimination of spousal support by premarital agreement was also omitted. See Section 912 Comment. See also Prob. Code §§ 140-147 (surviving spouse's waiver of rights).

**§ 1616. Effect of void marriage**

**Comment.** Section 1616 continues former Civil Code Section 5316 without change. Section 1616 is the same as Section 7 of the Uniform Premarital Agreement Act (1983).

**§ 1617. Limitation of actions**

**Comment.** Section 1617 continues former Civil Code Section 5317 without change. Section 1617 is the same as Section 8 of the Uniform Premarital Agreement Act (1983).

**CHAPTER 3. AGREEMENTS BETWEEN HUSBAND AND WIFE**

**§ 1620. Restrictions on contract altering spouses' legal relations**

**Comment.** Section 1620 continues the first part of former Civil Code Section 4802 without substantive change. The phrase "[e]xcept as otherwise provided by law" has been substituted for specific references to former Civil Code Sections 4801(b) and 4811, since the former specific references were no longer a complete listing of exceptions to this rule. Section 1620 does not purport

to limit the statutory and case law exceptions to the rule stated in this section. A more extensive list of exceptions to this rule includes, for example, Sections 3580-3591 (support agreements), 2550 (agreement concerning division of community estate), 2641 (agreement concerning community contributions and loans for education or training of a spouse), 3592 (agreement discharge in bankruptcy), 3651 (modification or termination of support order where there is an agreement between parties on the subject of support), 4302 (spouse living separate by agreement), 4337 (unless otherwise agreed by parties in writing, support obligation terminates upon death of either party or the remarriage of the supported party).

See also Prob. Code §§ 140-147 (requirements for waiver, agreement, or property settlement affecting certain rights of a surviving spouse upon death of other spouse). See also Section 11 (reference to married person includes formerly married person).

DIVISION 5. CONCILIATION PROCEEDINGS

PART 1. FAMILY CONCILIATION COURT LAW

CHAPTER 1. GENERAL PROVISIONS

§ 1800. Short title

**Comment.** Section 1800 continues former Code of Civil Procedure Section 1731 without change.

§ 1801. Purposes of part

**Comment.** Section 1801 continues former Code of Civil Procedure Section 1730 without substantive change.

§ 1802. Applicability of part

**Comment.** Section 1802 continues former Code of Civil Procedure Section 1733 without substantive change.

CHAPTER 2. FAMILY CONCILIATION COURTS

§ 1810. Jurisdiction; court to be known as "family conciliation court"

**Comment.** Section 1810 continues former Code of Civil Procedure Section 1740 without substantive change.

§ 1811. Assignment of judges; number of sessions

**Comment.** Section 1811 continues former Code of Civil Procedure Section 1741 without substantive change.

§ 1812. Transfer of cases

**Comment.** Section 1812 continues former Code of Civil Procedure Section 1742 without substantive change.

§ 1813. Substitute judge

**Comment.** Section 1813 continues former Code of Civil Procedure Section 1743 without substantive change.

§ 1814. Appointment of supervising counselor, secretary, and other assistants

**Comment.** Section 1814 restates former Code of Civil Procedure Section 1744 without substantive change. In subdivision (b)(5), the phrase "relating to marriages where one or both parties are underage" has been substituted for "relating to preage marriages," to conform to language used in other sections of this code. See, e.g., Sections 302 & 353 (underage applicants for marriage license).

§ 1815. Qualifications of supervising and associate counselors

**Comment.** Section 1815 continues former Code of Civil Procedure Section 1745 without substantive change. In subdivision (c), the specific effective date of the former section has been substituted for the former general reference. See 1980 Cal Stat. ch. 48, § 9. The first sentence of former Code of Civil Procedure Section 1745(c), which required counselors of conciliation to meet provisions of the section by January 1, 1984, has been omitted as obsolete.

§ 1816. Continuing instruction programs

**Comment.** Section 1816 continues former Code of Civil Procedure Section 1745.5 without substantive change. See also Sections 55 ("abuse" defined), 70 ("domestic violence" defined).

§ 1817. Probation officers; duties

**Comment.** Section 1817 continues former Code of Civil Procedure Section 1746 without substantive change.

**§ 1818. Confidentiality of hearings, conferences, and papers**

**Comment.** Section 1818 continues former Code of Civil Procedure Section 1747 without substantive change. The introductory phrase "[n]otwithstanding the provisions of Section 124" in former Code of Civil Procedure Section 1747 has been omitted as unnecessary. See Section 214 Comment; Code of Civ. Proc. § 124 (court proceedings to be public).

**§ 1819. Destruction of records**

**Comment.** Section 1819 restates former Code of Civil Procedure Section 1748 without substantive change.

**§ 1820. Agreement between counties for joint family conciliation court services**

**Comment.** Section 1820 continues former Code of Civil Procedure Section 1749 without substantive change.

## CHAPTER 3. PROCEEDINGS FOR CONCILIATION

**§ 1830. Jurisdiction of family conciliation court**

**Comment.** Section 1830 restates former Code of Civil Procedure Section 1760 without substantive change. The reference to legal separation has been added to conform with other sections. See, e.g., Sections 1831, 1840, 1841. See also Sections 70 ("domestic violence" defined), 1842 (conciliation court may accept other cases where no minor children involved), 3155-3183 (mediation of visitation or custody issues), 3190-3192 (counseling of parents and child).

**§ 1831. Petition; right to file; purpose**

**Comment.** Section 1831 continues former Code of Civil Procedure Section 1761 without substantive change. See also Sections 3155-3183 (mediation of visitation or custody issues), 3190-3192 (counseling of parents and child).

**§ 1832. Caption of petition**

**Comment.** Section 1832 continues former Code of Civil Procedure Section 1762 without change.

**§ 1833. Contents of petition**

**Comment.** Section 1833 continues former Code of Civil Procedure Section 1763 without substantive change. See also Section 70 ("domestic violence" defined).

**§ 1834. Blank forms; assistance in preparing and presenting petition; references; coextensive jurisdiction in instances of domestic violence**

**Comment.** Section 1834 continues former Code of Civil Procedure Section 1764 without substantive change. See also Section 70 ("domestic violence" defined).

**§ 1835. Fees**

**Comment.** Section 1835 continues former Code of Civil Procedure Section 1765 without change.

**§ 1836. Hearing; time; place; notice; citation; witnesses**

**Comment.** Section 1836 continues former Code of Civil Procedure Section 1766 without substantive change.

**§ 1837. Time and place of hearings**

**Comment.** Section 1837 continues former Code of Civil Procedure Section 1767 without substantive change.

**§ 1838. Informal hearings; aid of specialists or experts**

**Comment.** Section 1838 continues former Code of Civil Procedure Section 1768 without substantive change.



**§ 1839. Orders; duration; reconciliation agreement; temporary support**

**Comment.** Section 1839 continues former Code of Civil Procedure Section 1769 without substantive change.

**§ 1840. Stay of right to file other proceeding; effect of pendency of other proceeding on conciliation proceeding**

**Comment.** Section 1840 continues former Code of Civil Procedure Section 1770 without substantive change. See also Sections 3155-3183 (mediation of visitation or custody issues), 3190-3192 (counseling of parents and child).

**§ 1841. Other pending proceeding involving minor child; transfer to family conciliation court**

**Comment.** Section 1841 restates former Code of Civil Procedure Section 1771 without substantive change. In the introductory paragraph of this section, the phrase "nullity of marriage" has been substituted for "declaration of nullity of a voidable marriage." The reference to the "superior" court has been omitted as surplus. See Section 200 (jurisdiction in superior court).

**§ 1842. Transfer where no minor child involved in other proceedings**

**Comment.** Section 1842 continues former Code of Civil Procedure Section 1772 without substantive change.

## PART 2. STATEWIDE COORDINATION OF FAMILY MEDIATION AND CONCILIATION SERVICES

**§ 1850. Judicial Council duties**

**Comment.** Section 1850 continues former Civil Code Section 5181 without substantive change. Application of subdivision (a) has been expanded to cover all mediation and conciliation proceedings under this code. The former section applied only to implementation of former Civil Code Sections 4351.5 and 4607.

In subdivision (b), the phrase "relating to proceedings brought for dissolution of marriage, for nullity of marriage, or for legal separation of the parties" has been substituted for "relating to actions brought pursuant to this part." The former reference to "this part" referred to former Part 5 (commencing with Section 4000) of Division 4 of the Civil Code (the former Family Law Act). See also Sections 3155-3183 (mediation of visitation or custody issues), 3190-3192 (counseling of parents and child).

**§ 1851. Advisory committee**

**Comment.** Section 1851 continues former Civil Code Section 5182 without substantive change.

**§ 1852. Funds**

**Comment.** Section 1852 continues former Civil Code Section 5183 without substantive change. The word "devises" has been substituted for "bequests" to conform with the Probate Code. See Prob. Code § 32 ("devise" defined).

COMMENTS TO AB 2650

## DIVISION 6. NULLITY, DISSOLUTION, AND LEGAL SEPARATION

### PART 1. GENERAL PROVISIONS

#### CHAPTER 1. APPLICATION OF PART

**§ 2000. Application to dissolution, nullity, and legal separation proceedings**

**Comment.** Section 2000 is drawn from Rule 1201(c) ("proceeding" defined) of the California Rules of Court (Family Law Rules). A proceeding for dissolution of marriage, for nullity of marriage, or for legal separation of the parties includes not only a determination of marital status, but also determinations of property rights, support, and custody matters. See Section 2010 (authority of court).

#### CHAPTER 2. JURISDICTION

**§ 2010. Authority of court**

**Comment.** Section 2010 continues the first portion of former Civil Code Section 4351 without substantive change. See also Section 200 (jurisdiction in superior court). The substance of the remainder of former Section 4351 is continued in Section 2060. See also Section 2556 (continuing jurisdiction to award community property or adjudicate debts).

**§ 2011. Jurisdiction over property of spouse served by publication**

**Comment.** Section 2011 continues former Civil Code Section 4813 without substantive change. This section applies in a proceeding for dissolution of marriage, for nullity of marriage, or for legal separation of the parties. See Section 2000 (application of part). See also Sections 65 ("community property" defined), 125 ("quasi-community property" defined). As to other proceedings, see Rule 1207 of the California Rules of Court.

**§ 2012. Special appearance in opposition to order made during pendency of objection to jurisdiction**

**Comment.** Section 2012 continues former Civil Code Section 4356 without substantive change. This section applies in a proceeding for dissolution of marriage, for nullity of marriage, or for legal separation of the parties. See Section 2000 (application of part). Section 2012 enables the respondent to contest pendente lite orders in family law proceedings without prejudicing the respondent's right to litigate the in personam jurisdiction of the court by special appearance pursuant to Code of Civil Procedure Section 418.10. For background on former Civil Code Section 4356, see *Recommendation Relating to Special Appearance in Family Law Proceedings*, 17 Cal. L. Revision Comm'n Reports 243 (1984).

#### CHAPTER 3. PROCEDURAL PROVISIONS

**§ 2020. Responsive pleading**

**Comment.** Section 2020 continues former Civil Code Section 4355 without substantive change. This section applies in proceedings for dissolution, nullity, or legal separation. See Section 2000 (application of part). As to other proceedings, see Rule 1207 of the California Rules of Court.

**§ 2021. Joinder of interested person and employee pension benefit plan as parties**

**Comment.** Section 2021 continues former Civil Code Section 4363 without substantive change. This section applies to a proceeding for dissolution of marriage, for nullity of marriage, or for legal separation of the parties. See Section 2000 (application of part). See also Family Law Rules Adopted by Judicial Council, Rules 1201(c) (adopted effective January 1, 1970), 1250 (as amended, effective January 1, 1978); 80 ("employee pension benefit plan" defined).

**§ 2022. Evidence collected by eavesdropping**

**Comment.** Section 2022 continues former Civil Code Section 4361 without substantive change.

**§ 2023. Payment of obligation directly to creditor**

**Comment.** Section 2023 continues former Civil Code Section 4358 without substantive change. This section applies in a proceeding for dissolution of marriage, for nullity of marriage, or for legal separation of the parties. See Section 2000 (application of part).

**§ 2024. Notice concerning effect of judgment on will, insurance, and other matters**

**Comment.** Section 2024 is the same as former Civil Code Section 4352. See also Prob. Code § 6122 and the Comment thereto. For background on former Civil Code Section 4352, see *Tentative Recommendation Relating to Wills and Intestate Succession*, 16 Cal. L. Revision Comm'n Reports 2301, 2485 (1982).

**§ 2025. Appeal of bifurcated issue**

**Comment.** Section 2025 continues former Civil Code Section 4365 without substantive change. See also Section 200 (jurisdiction in superior court). This section applies in a proceeding for dissolution of marriage, for nullity of marriage, or for legal separation of the parties. See Section 2000 (application of part). See also Family Law Rules Adopted by Judicial Council, Rules 1201 (adopted effective January 1, 1970), 1269 (adopted effective July 1, 1989), 1269.5 (adopted effective July 1, 1989). The provision of former Section 4365 that required the Judicial Council to establish rules for certification by July 1, 1989, has been omitted as obsolete. See Family Law Rules Adopted by Judicial Council, Rule 1269.5 (adopted effective July 1, 1989). See also Section 211 (rules of the Judicial Council).

**§ 2026. Effect of reconciliation of parties**

**Comment.** Section 2026 continues former Civil Code Section 4381 without substantive change. This section applies in a proceeding for dissolution, nullity, or legal separation. See Section 2000 (application of part).

## CHAPTER 4. RESTRAINING AND PROTECTIVE ORDERS

## Article 1. Orders in Summons

**§ 2030. Temporary restraining order in summons**

**Comment.** Section 2030 continues the first sentence and paragraphs (1), (2), and (3) of subdivision (a) of former Code of Civil Procedure Section 412.21 without substantive change. For general provisions on temporary restraining orders in summons, see Part 3 (commencing with Section 231) of Division 2.

**§ 2031. Rights, title, and interest of purchaser for value**

**Comment.** Section 2031 is new.

## Article 2. Orders During Pendency of Proceeding

**§ 2035. Ex parte protective orders during pendency of proceeding; purposes of order**

**Comment.** Section 2035 continues the first paragraph of subdivision (a) of former Civil Code Section 4359 with the addition of "telephoning" in subdivision (b). Section 2035(c) supersedes the last portion of subdivision (a) of former Civil Code Section 5102 which provided for ex-parte orders excluding a party from a dwelling. The reference to the "superior court" has been omitted as unnecessary in view of the general provision found in Section 200. See also Section 2030 (temporary restraining order in summons). For general provisions relating to temporary restraining orders, See Sections 240-244. See also Sections 3100, 3101 (visitation rights). For comparable provisions, see Sections 7710, 5550.

**§ 2036. Limitation on issuance of mutual restraining order**

**Comment.** Section 2036 continues the second paragraph of subdivision (a) of former Civil Code Section 4359 without substantive change. See also Sections 55 ("abuse" defined), 70 ("domestic violence" defined). For comparable provisions, see Sections 7711, 5514.

**§ 2036.5 Order excluding party from dwelling issued after notice and hearing**

**Comment.** Section 2036.5 continues without substantive change the last part of the former Civil Code Section 5102(a) which provided for obtaining an order excluding a party from a dwelling after notice and hearing.

**§ 2037. Required statements in order**

**Comment.** The introductory portion of Section 2037 continues the third paragraph of subdivision (a) of former Civil Code Section 4359, making clear the extent to which it is limited to restraining orders against domestic violence. For a comparable provision, see Section 7730. It should be noted that the Judicial Council may prescribe the precise language to be used in the form. Section 2043.

Subdivision (a) is new and is drawn from former Code of Civil Procedure Section 552 (Domestic Violence Prevention Act). Subdivision (b) supersedes the first sentence of subdivision (c) of former Civil Code Section 4359, and uses language taken from the official Judicial Council form for restraining orders in place of the similar language used in former Section 4359. See Temporary Restraining Orders (Family Law) Judicial Council Form 1285.05 (Rev. July 1, 1987). For a provision comparable to subdivision (a)(1), see Section 7730. Subdivision (c) continues subdivision (d) of former Civil Code Section 4359, extending its application to other domestic violence prevention orders.

**§ 2038. Transmittal to local law enforcement agency**

**Comment.** Section 2038 continues the first sentence of the first paragraph of subdivision (b) of former Civil Code Section 4359, making clear that it is limited to restraining orders against domestic violence. This revision conforms Section 2038 to Sections 2041 and 2042. See also Section 70 ("domestic violence" defined). For comparable provisions, see Sections 7740, 5800.

**§ 2039. Law enforcement agency to make information concerning order available to law enforcement officers**

**Comment.** Section 2039 continues the second sentence of the first paragraph of subdivision (b) of former Civil Code Section 4359, making clear that it is limited to restraining orders against domestic violence. See also Section 70 ("domestic violence" defined). For comparable provisions, see Sections 7741, 5801.

**§ 2040. Enforcement of order**

**Comment.** Section 2040 continues the second paragraph of subdivision (b) of former Civil Code Section 4359, making clear that it applies to orders included in the judgment pursuant to Section 2045 as well as to prejudgment orders pursuant to this article.

**§ 2041. Service of restraining order against domestic violence by law enforcement officer**

**Comment.** Section 2041 continues subdivision (e) of former Civil Code Section 4359 without substantive change. See also Section 70 ("domestic violence" defined). For comparable provisions, see Sections 7742, 5802.

**§ 2042. Penalty for violation of restraining order against domestic violence**

**Comment.** Section 2042 continues the second sentence of subdivision (c) of former Civil Code Section 4359 with the change noted below. For comparable provisions, see Sections 7743, 5807.

Section 2042 extends the criminal penalty to apply to a violation of any provision of an order granted pursuant to Section 2035. Under prior law, the criminal penalty applied only to violation of an order granted pursuant to the provisions which are now subdivision (b), (c), or (d) of Section 2035.

However, the expansion of the criminal penalty to cover any provision of an order granted pursuant to Section 2035 is consistent with the Judicial Council form for the order which states: "Violation of these temporary restraining orders is a misdemeanor, punishable by a \$1000 fine, six months in jail, or both." The actual order made on the Judicial Council form is not limited to the subdivisions listed above; it covers all of the subdivisions now found in Section 2035.

**§ 2043. Judicial Council forms and instructions**

**Comment.** Section 2043 continues the fourth paragraph of subdivision (a) of former Civil Code Section 4359 without substantive change. For comparable provisions, see Sections 5519, 6295. See also Section 211 and the Comment to that section.

**Article 3. Judgment**

**§ 2045. Protective orders included in judgment**

**Comment.** Section 2045 continues former Civil Code Sections 4458 and 4516 with two revisions: (1) The former provisions applied to "this part," thus apparently applying to the entire Family Law Act. Section 2045 is limited to a judgment in a marriage dissolution, nullity, or legal separation proceeding. See Section 2000. But see Section 7750.

(2) Section 2045 includes the orders set forth in subdivision (c) of Section 2035, whereas the former sections did not specifically include those orders although they did include an order set forth in subdivision (d) of Section 2035.

For a comparable provision, see Section 7750.

**CHAPTER 5. NOTICE TO INSURANCE CARRIERS**

**§ 2050. Notice of pending proceeding**

**Comment.** Section 2050 continues subdivision (a) of former Civil Code Section 4366 without substantive change.

**§ 2051. Notice of entry and requirements of judgment**

**Comment.** Section 2051 continues subdivision (b) of former Civil Code Section 4366 without substantive change.

**§ 2052. Manner of giving notice**

**Comment.** Section 2052 continues subdivision (c) of former Civil Code Section 4366, substituting first class for "regular" mail.

**§ 2053. Policyholder to furnish other party with name and address of insurer**

**Comment.** Section 2053 continues subdivision (d) of former Civil Code Section 4366 without substantive change.

**CHAPTER 6. EMPLOYEE PENSION BENEFIT PLAN AS PARTY**

**Article 1. Joinder of Plan**

**§ 2060. Application and order for joinder of plan**

**Comment.** Subdivision (a) of Section 2060 continues the first sentence of subdivision (a) of former Civil Code Section 4363.1 without substantive change. This section applies to a proceeding for dissolution of marriage, for nullity of marriage, or for legal separation of the parties. See Section 2000 (application of part). See also Section 80 ("employee pension benefit plan" defined).

Subdivision (b) continues the last portion of former Civil Code Section 4351 without substantive change. The substance of the remainder of former Section 4351 is continued in Section 2010. See also Section 80 ("employee pension benefit plan" defined). A judgment for support may be enforced

against an employee pension benefit plan regardless of whether the plan has been joined as a party. See Section 5103.

**§ 2061. Pleading of party requesting joinder**

**Comment.** Section 2061 continues the second sentence of subdivision (a) of former Civil Code Section 4363.1 without substantive change.

**§ 2062. Service upon trustee, administrator, or agent of plan**

**Comment.** Section 2062 continues the third, fourth, fifth, and sixth sentences of subdivision (a) of former Civil Code Section 4363.1 without substantive change. See also Section 80 ("employee pension benefit plan" defined).

**§ 2063. Notice of appearance and responsive pleading by plan**

**Comment.** Subdivision (a) of Section 2063 continues the first sentence of subdivision (b) of former Civil Code Section 4363.1 without substantive change. Subdivision (b) continues subdivision (b) of former Civil Code Section 4363.2 without substantive change. See also Section 80 ("employee pension benefit plan" defined).

**§ 2064. Plan need not pay filing fees**

**Comment.** Section 2064 continues the second sentence of subdivision (b) of former Civil Code Section 4363.1 without substantive change. See also Section 80 ("employee pension benefit plan" defined).

**§ 2065. Entry of default of plan**

**Comment.** Section 2065 continues subdivision (c) of former Civil Code Section 4363.1 without substantive change. See also Section 80 ("employee pension benefit plan" defined).

**Article 2. Proceedings After Joinder**

**§ 2070. Provisions governing proceeding in which plan has been joined**

**Comment.** Section 2070 continues subdivision (a) of former Civil Code Section 4363.2 without substantive change. See also Section 80 ("employee pension benefit plan" defined).

**§ 2071. Notice to plan of proposed property settlement; response by plan**

**Comment.** Section 2071 continues subdivision (c) of former Civil Code Section 4363.2 without substantive change. The phrase "any hearing at which the proposed property settlement will be a matter before the court" has been substituted for "the interlocutory hearing." See also Section 80 ("employee pension benefit plan" defined).

**§ 2072. Appearance by plan at hearing**

**Comment.** Section 2072 continues the first two sentences of subdivision (d) of former Civil Code Section 4363.2 without substantive change. See also Section 80 ("employee pension benefit plan" defined).

**§ 2073. Order affecting plan made at hearing not attended by plan**

**Comment.** Section 2073 continues the third and fourth sentences of subdivision (d) of former Civil Code Section 4363.2 without substantive change. See also Section 80 ("employee pension benefit plan" defined).

**§ 2074. Motion to set aside or modify order**

**Comment.** Subdivisions (a) and (b) of Section 2074 continue subdivision (e) of former Civil Code Section 4363.2 without substantive change. Subdivision (c) continues the last sentence of subdivision (d) of former Civil Code Section 4363.2 without substantive change. See also Sections 65 ("community property" defined), 80 ("employee pension benefit plan" defined), 125 ("quasi-community property" defined).

## CHAPTER 7. RESTORATION OF WIFE'S FORMER NAME

**§ 2080. Restoration of wife's former name**

**Comment.** Section 2080 continues subdivision (a) of former Civil Code Section 4362 and subdivision (a) of former Civil Code Section 4457 without substantive change. However, Section 2080 has been phrased to continue what appears to have been the substantive effect of former Civil Code Sections 4362 and 4457. Former Civil Code Section 4362 applied to a proceeding under "this part [the Family Law Act], except an action for legal separation." This language appears to have been intended to cover a proceeding for the dissolution of the marriage. Former Civil Code Section 4457 applied only to a proceeding "under this title" which covered only a proceeding for a judgment of nullity of marriage. See also Code Civ. Proc § 1279.6 (doing business with or providing services to woman, regardless of her marital status, who uses her birth name or former name).

**§ 2081. Restoration not to be denied for any reason other than fraud**

**Comment.** Section 2081 continues subdivision (c) of former Civil Code Section 4362 and subdivision (c) of former Civil Code Section 4457 without substantive change.

**§ 2082. Common law right to change name not limited**

**Comment.** Section 2082 continues subdivision (b) of former Civil Code Section 4362 and subdivision (b) of former Civil Code Section 4457, and broadens their application from the former Family Law Act to the Family Code. See also Code Civ. Proc § 1279.6 (doing business with or providing services to woman, regardless of her marital status, who uses her birth name or former name).

## CHAPTER 8. UNIFORM DIVORCE RECOGNITION ACT

**§ 2090. Short title**

**Comment.** Section 2090 continues former Civil Code Section 5000 without substantive change. See also Sections 3 (construction of provisions drawn from uniform act). 14 (severability of provisions).

**§ 2091. Effect of foreign divorce of parties domiciled in this state**

**Comment.** Section 2091 is the same as former Civil Code Section 5001.

**§ 2092. Prima facie evidence of domicile**

**Comment.** Section 2092 is the same as former Civil Code Section 5002. The word "hereafter" which is used in Section 2092 is to be construed as of the time former Section 5002 was enacted. See Section 2 (provision to be construed as a restatement and continuation and not as a new enactment).

**§ 2093. Full faith and credit limitation**

**Comment.** Section 2093 is the same as former Civil Code Section 5004. See also Section 13 (severability of provisions).

PART 2. JUDICIAL DETERMINATION  
OF VOID OR VOIDABLE MARRIAGE

## CHAPTER 1. VOID MARRIAGE

**§ 2200. Incestuous marriages**

**Comment.** Section 2200 is the same as former Civil Code Section 4400.

**§ 2201. Bigamous and polygamous marriages**

**Comment.** Section 2201 continues former Civil Code Section 4401 without substantive change.



CHAPTER 2. VOIDABLE MARRIAGE

§ 2210. Grounds for adjudging marriage a nullity

**Comment.** Section 2210 continues former Civil Code Section 4425 without substantive change.

§ 2211. Limitations of actions

**Comment.** Section 2211 continues former Civil Code Section 4426 without substantive change. For background on former Civil Code Section 4426, see *Recommendation Relating to Guardianship-Conservatorship Law*, 14 Cal. L. Revision Comm'n Reports 501 (1978).

§ 2212. Effect of judgment of nullity

**Comment.** Subdivision (a) of Section 2212 is the same as former Civil Code Section 4429. Subdivision (b) is the same as former Civil Code Section 4451.

CHAPTER 3. PROCEDURAL PROVISIONS

§ 2250. Petition for judgment of nullity; filing and service

**Comment.** Section 2250 continues former Civil Code Section 4450 without substantive change. See Section 200 (jurisdiction in superior court). See also Sections 2080-2083 (restoration of wife's former name).

§ 2251. Status of putative spouse; division of quasi-marital property

**Comment.** Section 2251 continues the first three sentences of former Civil Code Section 4452 without substantive change except that the provision of the former section referring to former Civil Code Section 4800 has been expanded to include all of Division 7 (commencing with Section 2500) of the Family Code.

§ 2252. Liability of quasi-marital property for debts

**Comment.** Section 2252 continues the last sentence of former Civil Code Section 4452 without substantive change. Under Section 4452, quasi-marital property is treated the same as community and quasi-community property for purposes of creditors' remedies. See Section 916 (liability of property after division). For background on former Civil Code Section 4452, see *Recommendation Relating to Liability of Marital Property for Debts*, 17 Cal. L. Revision Comm'n Reports 1 (1984).

§ 2253. Custody of children

**Comment.** Section 2253 continues former Civil Code Section 4454 without substantive change. See also Section 215 (best interest of the child).

§ 2254. Support of putative spouse

**Comment.** Section 2254 continues former Civil Code Section 4455 without substantive change.

§ 2255. Attorney's fees and costs

**Comment.** Section 2255 continues former Civil Code Section 4456 without substantive change except that a reference of all of Part 6 (commencing with Section 270) has been substituted for the former more limited reference to former Civil Code Section 4370.

PART 3. DISSOLUTION OF MARRIAGE

CHAPTER 1. EFFECT OF DISSOLUTION

§ 2300. Effect of dissolution

**Comment.** Section 2300 continues former Civil Code Section 4501 without substantive change. The words "when it becomes final" have been added to recognize that there is a waiting period before the judgment becomes final. See Section 2339. See also Sections 2340-2344.

## CHAPTER 2. GROUNDS FOR DISSOLUTION OR LEGAL SEPARATION

## § 2310. Grounds for dissolution or legal separation

**Comment.** Section 2310 continues former Civil Code Section 4506 without substantive change.

## § 2311. Irreconcilable differences defined

**Comment.** Section 2311 continues former Civil Code Section 4507 without substantive change.

## § 2312. Proof required for dissolution on grounds of incurable insanity

**Comment.** Section 2312 is the same as subdivision (a) of former Civil Code Section 4510.

## § 2313. Duty of support not affected by dissolution on grounds of insanity

**Comment.** Section 2313 continues subdivision (b) of former Civil Code Section 4510 without substantive change.

## CHAPTER 3. RESIDENCE REQUIREMENTS

## § 2320. Residence requirement for dissolution judgment

**Comment.** Section 2320 continues subdivision (a) of former Civil Code Section 4530 without substantive change. See also Code Civ. Proc. § 395 (venue for marriage dissolution proceeding).

## § 2321. Conversion of separation proceeding to dissolution proceeding

**Comment.** Section 2321 continues subdivision (b) of former Civil Code Section 4530 without substantive change.

## § 2322. Separate domicile or residence

**Comment.** Section 2322 continues former Civil Code Section 4531 without substantive change.

## CHAPTER 4. GENERAL PROCEDURAL PROVISIONS

## § 2330. Petition

**Comment.** Subdivision (a) of Section 2330 continues the first sentence of former Civil Code Section 4503 without substantive change. See Section 200 (jurisdiction in superior court). Subdivision (b) continues former Code of Civil Procedure Section 429.10 without substantive change except that the subdivision is made applicable to a proceeding for legal separation.

## § 2330.5. Financial declarations not required in certain default cases

**Comment.** Section 2330.5 continues former Civil Code Section 4364 without substantive change. The phrase "income and expense declarations and property declarations" has been substituted for "a financial declaration." See also Sections 95 ("income and expense declaration" defined), 115 ("property declaration" defined).

## § 2331. Service on other spouse

**Comment.** Section 2331 is the same as the second sentence of former Civil Code Section 4503. See also Section 2332 (service on guardian or conservator of insane spouse where dissolution based on incurable insanity).

## § 2332. Representation of insane spouse by guardian, conservator, or guardian ad litem

**Comment.** Section 2332 continues subdivisions (c) and (d) of former Civil Code Section 4510 without substantive change. For background on former Civil Code Section 4510, see *Recommendation Relating to Guardianship-Conservatorship Law*, 14 Cal. L. Revision Comm'n Reports 501, 930 (1978).

## § 2333. Court finding and order where grounds is irreconcilable differences

**Comment.** Section 2333 continues the first sentence of subdivision (a) of former Civil Code Section 4508 without substantive change.

**§ 2334. Continuance for reconciliation**

**Comment.** Section 2334 continues the second, third, and fourth sentences of subdivision (a) of former Civil Code Section 4508 without substantive change. See also Section 150 ("support" when used with reference to a minor child includes maintenance and education).

**§ 2335. Evidence of specific acts of misconduct**

**Comment.** Section 2335 continues former Civil Code Section 4509 with the addition of subdivision (b). Subdivision (b) is a new provision that recognizes that evidence of specific acts of misconduct is admissible in proceedings to obtain or retain in effect a domestic violence prevention order. See, e.g., Section 2036. See also Section 75 ("domestic violence prevention order" defined).

**§ 2336. Proof required for default**

**Comment.** Section 2336 continues former Civil Code Section 4511 without substantive change.

**§ 2337. Severance and grant of early trial on issue of dissolution of status of the marriage**

**Comment.** Section 2337 continues former Civil Code Section 4515 without substantive change. "Community estate" is substituted for "community property" in subdivision (b)(1). See Section 2501 ("community estate" defined to include both community and quasi-community property for purpose of division of community estate). See also Section 2010 (authority of court).

**§ 2338. Decisions; judgments**

**Comment.** Section 2338 continues former Civil Code Section 4512 without substantive change. The word "proceeding" has been substituted for "action." The phrase "judgment of dissolution shall be entered" has been substituted for "a judgment shall be entered declaring that the parties are entitled to have their marriage dissolved" which was used in former Civil Code Section 4512. The language in former Section 4512 appears to reflect the former procedure where an "interlocutory" judgment was entered and later a final judgment was entered. The new language used in Section 2338 is consistent with the new procedure which longer uses an "interlocutory" judgment. Subdivision (a) has been expanded to cover "legal separation" as well as dissolution of marriage.

**§ 2339. Waiting period before dissolution judgment becomes final**

**Comment.** Section 2339 continues the first sentence of subdivision (a) former Civil Code Section 4514 without substantive change. The language used in Section 2339 makes clear that the section applies to the judgment of dissolution insofar as it terminates the marriage relationship of the parties.

**§ 2340. Statement in judgment of date marriage terminates**

**Comment.** Section 2340 continues second sentence of subdivision (a) of former Civil Code Section 4514 without substantive change.

**§ 2341. Effect of appeal or motion for new trial**

**Comment.** Subdivision (a) of Section 2341 continues the third sentence of subdivision (a) of former Civil Code Section 4514 without substantive change. Subdivision (b) continues subdivision (b) of former Civil Code Section 4514 without substantive change.

**§ 2342. Calculating date judgment becomes final where joint petition for summary dissolution is revoked**

**Comment.** Section 2342 continues subdivision (c) of former Civil Code Section 4514 without substantive change. The language of the section has been revised to recognize that there is waiting period before a dissolution judgment becomes a final judgment insofar as it relates to the dissolution of the marriage status and restoring the parties to the status of unmarried persons. See Section 2339.

**§ 2343. Court may retain jurisdiction over date of termination or order termination at future specified date**

**Comment.** Section 2343 continues subdivision (e) of former Civil Code Section 4514 without substantive change.

**§ 2344. Effect of death of either party after entry of judgment**

**Comment.** Section 2344 continues subdivision (d) of former Civil Code Section 4514 without substantive change. The language of the former provision has been revised to recognize that the judgment is entered and becomes final, without further action by the court, when the time runs.

**§ 2345. Consent of parties to legal separation**

**Comment.** Section 2345 continues the first sentence of subdivision (b) of former Civil Code Section 4508 without substantive change.

**§ 2346. Entry of judgment nunc pro tunc**

**Comment.** Section 2346 continues former Civil Code Section 4513 without substantive change.

**§ 2347. Legal separation judgment does not bar subsequent dissolution judgment**

**Comment.** Section 2347 continues the second sentence of subdivision (b) of former Civil Code Section 4508 without substantive change.

**CHAPTER 5. SUMMARY DISSOLUTION**

**§ 2400. Conditions necessary at commencement of proceeding**

**Comment.** Section 2400 continues former Civil Code Section 4550 without substantive change. The amounts set out in Section 2400 are the amounts effective January 1, 1991, as computed by the Judicial Council pursuant to subdivision (b). See "Joint Petition for Summary Dissolution of Marriage," Form Adopted by Rule 1295.10 Judicial Council of California.

**§ 2401. Joint petition**

**Comment.** Section 2401 continues former Civil Code Section 4551 without substantive change. See also Section 200 (jurisdiction in superior court).

**§ 2402. Revocation of joint petition and termination of proceeding**

**Comment.** Section 2402 continues former Civil Code Section 4552 without substantive change.

**§ 2403. Entry of judgment of dissolution**

**Comment.** Section 2403 continues former Civil Code Section 4553 without substantive change.

**§ 2404. Effect of entry of judgment**

**Comment.** Section 2404 continues former Civil Code Section 4554 without substantive change.

**§ 2405. Action to set aside judgment**

**Comment.** Section 2405 continues former Civil Code Section 4555 without substantive change.

**§ 2406. Brochure describing summary dissolution proceedings**

**Comment.** Section 2406 continues former Civil Code Section 4556 without substantive change.

## DIVISION 7. DIVISION OF PROPERTY

### PART 1. DEFINITIONS

#### § 2500. Application of definitions

**Comment.** Section 2500 is a standard provision found in recently enacted codes. See, e.g., Prob. Code § 20. The introductory portion of Section 2500 recognizes that the context of a particular section may require that a phrase used in that section be given a meaning different from the definition provided in this part.

#### § 2501. "Community estate"

**Comment.** Section 2501 continues the substance of the third paragraph of subdivision (a) of former Civil Code Section 4800 except that the scope of the provision has been expanded to cover all of Division 7 (commencing with Section 2500) of the new code. Formerly, the definition applied only to the provisions in former Section 4800. See also Section 125 ("quasi-community property" defined).

#### § 2502. "Separate property"

**Comment.** Section 2502 continues former Civil Code Section 4804 without substantive change insofar as it applied to division of property. See also Section 125 ("quasi-community property" defined). For a comparable definition applicable to support, see Section 3515.

### PART 2. GENERAL PROVISIONS

#### § 2550. Division of community estate equally

**Comment.** Section 2550 continues the first sentence of subdivision (a) of former Civil Code Section 4800 except that the scope of the provision has been expanded to cover all of Division 7 (commencing with Section 2500) of the new code. Formerly, the definition applied only to the provisions in former Section 4800. "Community estate" is defined in Section 2501. See also Sections 1620 (contract between married persons concerning their property), 2650 (division of jointly held separate property), 2554 (use of arbitration where parties do not voluntarily agree to division), 2660 (real property located in another state), 3592 (obligations of property settlement discharged in bankruptcy).

#### § 2551. Characterization of liabilities as separate or community and confirming or assigning them to parties

**Comment.** Section 2551 continues the second paragraph of subdivision (a) of former Civil Code Section 4800 without substantive change.

#### § 2552. Valuation date for assets and liabilities

**Comment.** Section 2552 continues the second sentence of subdivision (a) of former Civil Code Section 4800 without substantive change.

#### § 2553. Orders necessary to carry out purposes of this division

**Comment.** Section 2553 continues subdivision (f) of former Civil Code Section 4800 without substantive change except that the scope of the former provision has been expanded to cover all of Division 7 (commencing with Section 2500) of the new code. The former provision applied only to the provisions of former Section 4800. See also Section 3592 (obligations of property settlement discharged in bankruptcy).

#### § 2554. Arbitration where parties do not voluntarily agree to division

**Comment.** Section 2554 continues former Civil Code Section 4800.9 without change except that the scope of the "notwithstanding" clause at the beginning of the section has been expanded to cover all of Division 7 (commencing with Section 2500) and quasi-community property has been added to

the property included in determining the value of the property in controversy. The "notwithstanding" clause of former Section 4800.9 included only the provisions of former Section 4800.

**§ 2555. Revision of property disposition on appeal**

**Comment.** Section 2555 continues former Civil Code Section 4810 without change.

Section 2555 is limited in its application to property disposition provisions (excluding support orders). This limitation appears to continue the substantive effect of the provision of former law. It is possible, however, that the provision continued in Section 2555 may also have applied to former Civil Code Sections 4805, 4806, and 4807 (provisions relating to support) which are superseded by provisions found in Division 9. The limitation of Section 2555 to property disposition provisions precludes this possible construction. See also Sections 3554 (appeal from order or judgment under provisions relating to support), 3650-3655 (modification or termination of support).

**§ 2556. Continuing jurisdiction to award community property or adjudicate debts**

**Comment.** Section 2556 continues former Civil Code Section 4353 without substantive change except the term "community estate" has been substituted for "community," thereby making the section apply to omitted quasi-community property. See Section 2501 ("community estate" defined).

**PART 3. PRESUMPTION CONCERNING PROPERTY HELD IN JOINT FORM**

**§ 2580. Community property presumption for property held in joint form**

**Comment.** Subdivision (a)(1) of Section 2580 continues the first sentence of subdivision (b) of former Civil Code Section 4800.1 (as enacted by 1983 Cal. Stat. ch. 342, § 1) with the addition of language that recognizes the constitutional limitations on the application of Section 2580. See the discussion that follows. Subdivision (a)(2) continues the first sentence of subdivision (b) of former Civil Code Section 4800.1 (as amended by 1986 Cal. Stat. ch. 539, § 1) without substantive change. Subdivision (b) of Section 2580 continues the last portion of subdivision (b) of former Civil Code Section 4800.1 without substantive change. See also Section 2650 (division of jointly held separate property).

Under Section 2580, all property held in joint form by the spouses is presumed to be community absent a written agreement otherwise; and under Section 2640, all community property is divided subject to a right of reimbursement for separate property contributions absent an express agreement otherwise. These sections were enacted to remedy the rank injustice in former law that resulted from the following two factors:

(1) The Supreme Court's interpretation in the *Lucas* case of the community property presumption for a joint tenancy single-family residence under former law to find a gift of separate funds used to acquire a community asset absent an express agreement otherwise. See *In re Marriage of Lucas*, 27 Cal. 3d 808, 614 P.2d 285, 166 Cal. Rptr. 853 (1980). The *Lucas* decision was widely considered to cause injustice to persons who contributed their separate funds for use by the community and then lost the funds entirely to the community at dissolution of marriage. Often the parties were unaware that taking title in joint tenancy had the effect of making a gift of the separate property to the community.

(2) The rule that a spouse could disprove the community property presumption for a joint tenancy single-family residence under former law by evidence of an oral agreement that the residence is separate property. This rule promoted actions characterized by conflicting and inconsistent testimony, with each side offering different explanations for the effect of a joint tenancy deed. Often the intent of the parties who long ago filed a joint tenancy deed may be confused by faded memories or altered to self-serving testimony. The requirement of a writing provides a reliable test by which to determine the understanding of the parties; it seeks to prevent the abuses and unpredictability that have resulted from the oral agreement standard. See discussion in *In re Marriage of Martinez*, 156

Cal. App. 3d 20, 29, 202 Cal. Rptr. 646 (1984) (disapproved in *In re Marriage of Buol*, 39 Cal. 3d 751, 705 P.2d 354, 218 Cal. Rptr. 31 (1985)).

The community property presumptions created by subdivision (a) of Section 2580 are applicable in dissolution and legal separation proceedings only. The presumptions govern both real and personal property, whether situated in California or another jurisdiction, and include property acquired during marriage while domiciled in another jurisdiction. The presumptions also govern property initially acquired before marriage, the title to which is taken in joint form or as community property by the spouses during marriage. The measure of the separate property contribution under Section 2580 in such a case, is the value of the property at the time of its conversion to joint or community property form.

Subdivision (b) of Section 2580 requires a writing to rebut the community property presumption. To permit oral statements to defeat the community property presumption for purposes of dissolution of marriage would frustrate the strong public policy favoring community ownership of property acquired during marriage. The requirement of a writing is important to help ensure that a party waives his or her community property rights only upon mature consideration.

Section 2580 does not affect the validity of an oral agreement for any purpose other than division of property at dissolution of marriage, and for purposes of division it, together with Section 2640, recognizes and reimburses separate property contributions. This treatment of an oral agreement for purposes of division is fair because an oral agreement, whatever other purpose it might have (management and control, disposition at death, etc.), is not ordinarily intended to affect rights at dissolution or to make a present gift for that purpose. Casual statements made during marriage as a rule are not made with full knowledge of their consequences or with the intention that they change the rights of the parties if the marriage is dissolved.

Subdivision (a) of former Civil Code Section 4800.1, which sought to justify the application of Section 4800.1 without regard to the date the property was acquired, has not been continued. Instead, language has been added to Section 2580 to recognize that the section cannot constitutionally be applied to property described in subdivision (a) prior to the date of acquisition specified in paragraph (1) or (2) of subdivision (a), whichever is applicable. See, e.g., *In re Marriage of Delgado*, 176 Cal. App. 3d 666, 222 Cal. Rptr. 119 (1986). See also *In re Marriage of Buol*, 39 Cal. 3d 751, 705 P.2d 354, 218 Cal. Rptr. 31 (1985); *In re Marriage of Craig*, 219 Cal. App. 3d 683, 268 Cal. Rptr. 396 (1990); *In re Marriage of Bankovich*, 203 Cal. App. 3d 49, 249 Cal. Rptr. 713 (1988); *In re Marriage of Colombo*, 197 Cal. App. 3d 572, 242 Cal. Rptr. 100 (1987).

Subdivision (c) of Section 2580 is new and makes clear that the law concerning property not described in subdivision (a) is not affected by Section 2580. Accordingly, the character of the interest in property acquired in joint tenancy form by the parties before January 1, 1984, is not determined under or affected by Section 2580. Likewise, the character of the interest in property acquired by the parties before January 1, 1987, and held in tenancy in common, tenancy by the entirety, or as community property is not determined under or affected by Section 2580.

For background on former Civil Code Section 4800.1, see *Recommendation Relating to Division of Joint Tenancy and Tenancy in Common Property at Dissolution of Marriage*, 16 Cal. L. Revision Comm'n Reports 2165 (1982); 17 Cal. L. Revision Comm'n Reports 863 (1984); *Recommendation Relating to Civil Code Sections 4800.1 and 4800.2*, 18 Cal. L. Revision Comm'n Reports 383 (1986); 18 Cal. L. Revision Comm'n Reports 1741 (1986).

#### PART 4. SPECIAL RULES FOR DIVISION OF COMMUNITY ESTATE

##### § 2600. Special rules for division of community estate

**Comment.** Section 2600 continues the introductory portion of subdivision (b) of former Civil Code Section 4800 without substantive change.

**§ 2601. Awarding asset to one party to effect substantially equal division**

**Comment.** Section 2601 continues subdivision (b)(1) of former Civil Code Section 4800 without substantive change.

**§ 2602. Award or offset of amount deliberately misappropriated by party**

**Comment.** Section 2602 continues subdivision (b)(2) of former Civil Code Section 4800 without substantive change.

**§ 2603. Community estate personal injury damages**

**Comment.** Section 2603 continues subdivision (b)(4) of former Civil Code Section 4800 without substantive change. See also Sections 780-783 (damages for injuries to married person).

**§ 2604. Award where community estate less than \$5,000 and one party cannot be located**

**Comment.** Section 2604 continues subdivision (b)(3) of former Civil Code Section 4800 without substantive change.

**PART 5. RETIREMENT PLAN BENEFITS****§ 2610. Division of retirement plan benefits**

**Comment.** Section 2610 continues former Civil Code Section 4800.8 without change except that the reference in subdivision (a) has been expanded to cover all of Division 7 (commencing with Section 2500) of the new code. Formerly, the reference was to the provisions of former Civil Code Section 4800.

**PART 6. DEBTS AND LIABILITIES****§ 2620. Confirmation or division of debts of community estate**

**Comment.** Section 2620 continues the introductory portion of subdivision (c) of former Civil Code Section 4800 without substantive change. See also Sections 2551 (characterizing liabilities as separate or community by court and confirming or assigning them to parties), 2552 (valuation date for liabilities).

**§ 2621. Debts incurred before marriage**

**Comment.** Section 2621 continues subdivision (c)(1) of former Civil Code Section 4800 without change.

**§ 2622. Debts incurred after marriage but before separation**

**Comment.** Section 2622 continues subdivision (c)(2) of former Civil Code Section 4800 without substantive change.

**§ 2623. Debts incurred after separation but before judgment**

**Comment.** Section 2623 continues subdivision (c)(3) of former Civil Code Section 4800 without substantive change.

**§ 2624. Debts incurred after entry of judgment**

**Comment.** Section 2624 continues subdivision (c)(4) of former Civil Code Section 4800 without change.

**§ 2625. Separate debts**

**Comment.** Section 2625 continues subdivision (d) of former Civil Code Section 4800 without change.

**§ 2626. Reimbursement for debts paid after separation but before trial**

**Comment.** Section 2626 continues subdivision (e) of former Civil Code Section 4800 without change.



**§ 2627. Educational loans and tort liability**

**Comment.** Section 2627 continues subdivision (b)(5) of former Civil Code Section 4800 without change.

**§ 2628. Notice in judgment that creditor may be able to collect debt or obligation notwithstanding its being assigned to other party**

**Comment.** Section 2628 continues former Civil Code Section 4800.6 without change.

**PART 7. REIMBURSEMENTS****§ 2640. Separate property contributions to acquisition of property**

**Comment.** Section 2640 continues former Civil Code Section 4800.2 with two additions:

(1) Language is added to make clear that the section applies to quasi-community property as well as to community property. The language of former Section 4800.2 referred only to "community property," but the courts construed the section to apply to quasi-community property as well. See *In re Marriage of Craig*, 219 Cal. App. 3d 683, 268 Cal. Rptr 396 (1990).

(2) Language is added that limits reimbursement to cases where the property was "acquired on or after January 1, 1984, by the parties during marriage." This addition codifies a case law rule, based on impairment of vested rights without due process, that the section cannot constitutionally be applied to a case where the property was acquired prior to the effective date of the section. See, e.g., *In re Marriage of Craig*, 219 Cal. App. 3d 683, 268 Cal. Rptr. 396 (1990); *In re Marriage of Cairo*, 204 Cal. App. 3d 1255, 251 Cal. Rptr. 731 (1988); *In re Marriage of Bankovich*, 203 Cal. App. 3d 49, 249 Cal. Rptr. 713 (1988).

Section 2640 reversed the rule of *In re Marriage of Lucas*, 27 Cal. 3d 808, 614 P.2d 285, 166 Cal. Rptr. 853 (1980) (and cases following it), which precluded recognition of the separate property contribution of one of the parties to the acquisition of community property, unless the party could show an agreement between the spouses to the effect that the contribution was not intended to be a gift. Under Section 2640, in case of dissolution of the marriage, a party making a separate property contribution to the acquisition of the property is not presumed to have made a gift, unless it is shown that the parties agreed in writing that it was a gift, but is entitled to reimbursement for the separate property contribution at dissolution of marriage. The separate property contribution is measured by the value of the contribution at the time the contribution is made. Under this rule, if the property has since appreciated in value, the community is entitled to the appreciation. If the property has since depreciated in value, reimbursement may not exceed the value of the property; if both parties are entitled to reimbursement and the property has insufficient value to permit full reimbursement of both, reimbursement should be on a proportionate basis.

For background on former Civil Code Section 4800.2, see *Recommendation Relating to Division of Joint Tenancy and Tenancy in Common Property at Dissolution of Marriage*, 16 Cal. L. Revision Comm'n Reports 2165 (1982); 17 Cal. L. Revision Comm'n Reports 863 (1984); *Recommendation Relating to Civil Code Sections 4800.1 and 4800.2*, 18 Cal. L. Revision Comm'n Reports 383 (1986); 18 Cal. L. Revision Comm'n Reports 1741 (1986).

**§ 2641. Community contributions for education or training**

**Comment.** Section 2641 continues former Civil Code Section 4800.3 with two revisions:

(1) Subdivision (a) has been expanded to include payments made with quasi-community property. Former Section 4800.3 referred only to "community property," but it is likely that the section would have been construed to include payments made with quasi-community property. See *In re Marriage of Craig*, 219 Cal. App. 3d 683, 268 Cal. Rptr 396 (1990) ("California's marital property laws are designed to provide for uniform treatment of quasi-community and community property where the parties have changed their domicile to this state and seek to legally alter their marital status in a

California court. This intent is apparent from statutes such as section 4800 (equal division of 'community estate' consisting of community and quasi-community property) and section 4800.5 (power to order conveyance of out-of-state property)").

(2) The reference in subdivision (b)(2) has been expanded to cover all of Division 7 (commencing with Section 2500) of the Family Code. Formerly, the reference was to the provisions of former Civil Code Section 4800.

Section 2641 provides authority for reimbursement of educational expenses that have benefited primarily one party to the marriage. Although the education, degree, or license or the resulting enhanced earning capacity is not "property" subject to division, community expenditures for them are properly subject to reimbursement. See subdivision (d).

Subdivision (a) does not detail the expenditures that might be included within the concept of "community contributions." These expenditures would at least include cost of tuition, fees, books and supplies, and transportation.

Subdivision (b)(1) states the basic rule that community contributions must be reimbursed. The reimbursement right is limited to cases where the earning capacity of a party is substantially enhanced; this limitation is intended to restrict litigation by requiring that the education or training must demonstrably enhance earning capacity and to implement the policy of the section to redress economic inequity. However, it is not required that the party actually work in an occupation to which the enhancement applies; community contributions were made to the enhancement for the benefit of one party, who retains the potential to realize the enhancement in the future. Unless the rebuttable presumption of subdivision (c)(1) is overcome, reimbursement is limited to contributions made during the preceding ten years to minimize proof problems as well as potential inequity. Interest at the legal rate (Code Civ. Proc. § 685.010) accrues only from the end of each year in which expenditures were made in order to simplify accounting for numerous small expenditures made over the course of the education or training.

Subdivision (c) is intended to permit the court to avoid the requirements of this section in an appropriate case. For example, if one party receives a medical education, degree, and license at community expense, but the marriage endures for some time with a high standard of living and substantial accumulation of community assets attributable to the medical training, it might be inappropriate to require reimbursement. Subdivision (c)(1). If both parties receive education or training at community expense, it may be appropriate to allow no reimbursement even though the exact amounts expended for each are not equal. Subdivision (c)(2). This limitation is especially important where one party received education or training more than 10 years before the commencement of the dissolution or separation proceeding. See subdivision (c)(1). If toward the end of a lengthy marriage one party, who had been a homemaker during the marriage and had never completed an education or developed job skills, receives education or training to enable him or her to be gainfully employed, reimbursement could be improper. Subdivision (c)(3). Absent the education or training, support might be necessary to maintain the party or to permit the party to obtain education or training.

Subdivision (e) recognizes that at the time community contributions are made to the education or training of a spouse, the parties may have an agreement as to the conditions of the contributions. Since such agreements may be subject to litigation, subdivision (e) requires a writing.

For background on former Civil Code Section 4800.3, see *Recommendation Relating to Reimbursement of Educational Expenses*, 17 Cal. L. Revision Comm'n Reports 229 (1984). See also *In re Marriage of Sullivan*, 37 Cal. 3d 762, 209 Cal. Rptr. 354, 691 P.2d 1020 (1984).

## PART 8. JOINTLY HELD SEPARATE PROPERTY

### § 2650. Division of jointly held separate property

**Comment.** Section 2650 continues subdivision (a) of former Civil Code Section 4800.4 without substantive change. See Section 2501 ("community estate" defined). Section 2650 applies regardless

of when the separate property was acquired. Subdivision (b) of former Section 4800.4, which provided that the "section applies to proceedings commenced on or after January 1, 1986, regardless of whether the property was acquired before, on, or after January 1, 1986" has been omitted as unnecessary in view of Section 4(c).

Section 2650 reversed the former rule that the court in a dissolution or separation proceeding had no jurisdiction over property of the parties other than community or quasi-community property. The section supplements provisions governing community property held in joint tenancy form by extending the jurisdiction of the court to separate property held in joint tenancy form as well. It is consistent with the general rule that the court has jurisdiction to settle the property rights of the parties and with the principle that the court has jurisdiction to settle matters submitted to it by the parties. See Section 2010 (authority of court). It is also consistent with the rule that the court may reserve jurisdiction to divide community property that has become tenancy in common by operation of law upon dissolution or separation. See, e.g., *Marriage of Borges*, 83 Cal. App. 3d 771, 148 Cal. Rptr. 118 (1978); Comment, *Post-Dissolution Suits to Divide Community Property: A Proposal for Legislative Action*, 10 Pac. L.J. 825 (1979).

Section 2650 supplements the other provisions of this division by giving the court express jurisdiction over joint tenancy or tenancy in common separate property submitted by a party in a proceeding to divide property in a proceeding for dissolution or legal separation. Property subject to division includes property acquired by the parties either before or during marriage. It also includes property acquired or situated either in this state or elsewhere. For a special rule governing treatment of real property situated in another state, see Section 2660 (community and quasi-community property). See also Section 2011 (jurisdiction over property of spouse served by publication). The jurisdiction of the court extends only to the interests of the spouses, whether equal or unequal, and the court may not affect interests of third parties in the property. The interests of third parties may be subject to partition pursuant to Title 10.5 (commencing with Section 872.010) of Part 2 of the Code of Civil Procedure.

It should be noted that division of property pursuant to this section is subject to the same limitations applicable to division of community estate. Therefore, an express agreement of the parties precluding partition or other division of the property and providing a mechanism for dispute resolution or otherwise governing their rights in the property prevails over this section. See Section 2550 (division of community estate "[e]xcept upon the written agreement of the parties").

For background on former Civil Code Section 4800.4, see *Recommendation Relating to Dividing Jointly Owned Property Upon Marriage Dissolution*, 18 Cal. L. Revision Comm'n Reports 147 (1986); 18 Cal. L. Revision Comm'n Reports 365 (1986).

## PART 9. REAL PROPERTY LOCATED IN ANOTHER STATE

### § 2660. Division where community estate includes real property located in another state

**Comment.** Section 2660 continues former Civil Code Section 4800.5 except that a reference to "this division" has been substituted for the references to former Section 4800. Section 2660 specifies the procedure to be followed when the property subject to division includes real property situated in another state.

When real property is acquired in another state with community funds, the property is treated as community property for the purpose of division on dissolution of the marriage or on legal separation. See *Rozañ V. Rozañ*, 49 Cal. 2d 322, 317 P.2d 11 (1957); *Tomaier v. Tomaier*, 23 Cal. 2d 754, 146 P.2d 905 (1944); *Recommendation Relating to Quasi-Community Property*, 9 Cal. L. Revision Comm'n Reports 113, 119 n. 12 (1969). Quasi-community property likewise may include real property situated in another state. See 125 ("quasi-community property" defined). See also *Recommendation Relating to Quasi-Community Property*, 9 Cal. L. Revision Comm'n Reports 113 (1969).

Section 2660 recognizes that the judgment of the court dividing the property cannot directly affect real property in another state, even though the court has jurisdiction in personam over both spouses, unless the judgment is allowed that effect by the laws of the state in which the property is situated. *Fall v. Eastin*, 215 U.S. 1 (1909); *Rozan v. Rozan*, 49 Cal. 2d 322, 317 P.2d 11 (1957); *Taylor v. Taylor*, 192 Cal. 71, 218 P. 756 (1923). On the other hand, where the court has jurisdiction in personam over both parties, it may order one of the parties to execute a deed by acting in personam; if the person so ordered does execute the deed, it effectively conveys the interest transferred, even though executed under threat of contempt proceedings. *Fall v. Fall*, 75 Neb. 104, 113 N.W. 175 (1907), *aff'd*, *Fall v. Eastin*, 215 U.S. 1 (1909).

Section 2660 requires that the court first attempt to effect the equal division of the community property and quasi-community property required by this division without making any change in the nature of the interests held in the real property situated in the other state. This will be the result where the value of the other community and quasi-community property is equal to or exceeds the value of the real property situated in the other state that is subject to division. Where the court determines that the real property situated in another state or an interest in such property must be transferred from one party to the other to effect the equal division of community and quasi-community property required by this division, the court may order the parties to execute the necessary conveyances or to take such other actions — such as selling the property and including the proceeds in the property division — as may be necessary to effect an equal division of the community and quasi-community property and may enforce its order by contempt proceedings. If a party refuses to execute the instrument necessary to effect the transfer or sale of the property or to take some other necessary action, the problem may be dealt with by awarding the money value of the property or interest therein to the other party, which award must be given full faith and credit. *Fall v. Fall*, 75 Neb. 104, 113 N.W. 175 (1907), *aff'd*, *Fall v. Eastin*, 215 U.S. 1 (1909).

For background on former Civil Code Section 4800.5, see *Recommendation Relating to Quasi-Community Property*, 9 Cal. L. Revision Comm'n Reports 113 (1969); *Report of Assembly Committee on Judiciary on Assembly Bill 124*, 10 Cal. L. Revision Comm'n Reports 1042-43 (1971).

## DIVISION 8. CUSTODY OF CHILDREN

### PART 1. DEFINITIONS AND GENERAL PROVISIONS

#### CHAPTER 1. DEFINITIONS

**§ 3000. Application of definitions**

**Comment.** Section 3000 is a standard provision found in recently enacted codes. See, e.g., Prob. Code § 20. The introductory portion of Section 3000 recognizes that the context of a particular section may require that a word or phrase used in that section be given a meaning different from the definition provided in this part.

**§ 3002. "Joint custody"**

**Comment.** Section 3002 continues subdivision (d)(1) of former Civil Code Section 4600.5 without substantive change.

**§ 3003. "Joint legal custody"**

**Comment.** Section 3003 continues subdivision (d)(5) of former Civil Code Section 4600.5 without substantive change.

**§ 3004. "Joint physical custody"**

**Comment.** Section 3004 continues subdivision (d)(3) of former Civil Code Section 4600.5 without substantive change.

**§ 3006. "Sole legal custody"**

**Comment.** Section 3006 continues subdivision (d)(4) of former Civil Code Section 4600.5 without substantive change.

**§ 3007. "Sole physical custody"**

**Comment.** Section 3007 continues subdivision (d)(2) of former Civil Code Section 4600.5 without substantive change.

#### CHAPTER 2. GENERAL PROVISIONS

**§ 3010. Right of parent to custody, services, and earnings of unmarried minor child**

**Comment.** Section 3010 continues as former Civil Code Section 197 without substantive change. See also Sections 3003 (payment of earnings to minor), 3004 (parent may relinquish right of controlling child and receiving child's earnings).

**§ 3011. Right of parent to determine residence of child**

**Comment.** Section 3011 continues former Civil Code Section 213 without substantive change. The word "court" is substituted for "proper Court." See also Section 3063 (order restraining removal of child from state); Prob. Code § 2352 (guardian may fix residence of minor ward).

**§ 3012. Parent cannot control property of child**

**Comment.** Section 3012 is the same as former Civil Code Section 202. See also Section 3902 (court allowance to parent for support of child from child's property).

**§ 3013. Payment of earnings to minor**

**Comment.** Section 3013 restates the substance of former Civil Code Section 212 except that former Section 212 provided that the employer "may" (rather than "shall") pay the earnings to the minor. See also Prob. Code § 2601 (unless otherwise ordered by court, earnings of minor ward are not part of guardianship estate and are subject to control of ward). See also Section 3004 (relinquishment by parent of right to receive earnings of child).

**§ 3014. Parent may relinquish control and earnings of child**

**Comment.** Section 3014 continues former Civil Code Section 211 without substantive change.

**§ 3015. When parental authority ceases**

**Comment.** Section 3015 continues former Civil Code Section 204. See also Sections 7050-7052 (effect of emancipation of minor under Emancipation of Minors Act).

**§ 3016. Compensation where adult child continues to serve and be supported by parent**

**Comment.** Section 3016 continues former Civil Code Section 210 without substantive change.

**§ 3017. Order for support where custodial parent receiving public assistance**

**Comment.** Section 3017 continues former Civil Code Section 4600.2 with the expansion in Section 3007 of the reference found in former Section 4600.2 (to support order provisions) so that the reference in Section 3007 includes relevant provisions not included in the former reference.

**§ 3018. Remedy for abuse of parental authority**

**Comment.** Section 3018 is the same as former Civil Code Section 203.

## PART 2. RIGHT TO CUSTODY OF MINOR CHILD

### CHAPTER 1. GENERAL PROVISIONS

**§ 3020. Legislative findings and declarations**

**Comment.** Section 3020 continues the first sentence of subdivision (a) of former Civil Code Section 4600 without substantive change. The reference in former Section 4600 to the section setting out the factors to be considered in determining the best interest of the child has been omitted as unnecessary. See also Section 215 (factors to be considered in determining best interest of child).

**§ 3021. Authority of court to make custody order**

**Comment.** Section 3021 is the same as the second sentence of subdivision (a) of former Civil Code Section 4600. As to jurisdiction of the court, see Sections 3400-3425 (Uniform Child Custody Jurisdiction Act). See also Code Civ. Proc. § 917.7 (order not automatically stayed by appeal).

**§ 3022. Factors considered in determining best interest of child**

**Comment.** Section 3022 is the same as former Civil Code Section 4608 except that former Section 4608 applied only to proceedings under Title 4 (commencing with Section 4600) (custody of children) of the Family Law Act. See also Sections 70 ("domestic violence" defined), 3040 (order of preference in awarding custody), 3041 (additional requirements for custody award to nonparent), 3042 (consideration of wishes of child in custody case), 3043 (nomination of guardian by parent), 3044 (parent convicted under certain Penal Code provisions), 3080 (presumption for joint custody where parents agree to joint custody).

**§ 3023. Preference for trial on issue of custody**

**Comment.** Section 3023 is the same as former Civil Code Section 4600.6. See also Sections 3041 (excluding public from hearing on award of custody to nonparent), 4003 (separate trial on issue of child support).

**§ 3024. Notice to other parent of change of residence of child**

**Comment.** Section 3024 continues subdivision (m) of former Civil Code Section 4600.5 without substantive change. Although former Civil Code Section 4600.5 related to joint custody, subdivision (m) of that section (continued in Section 3024) was not by its terms limited to a joint custody order. Accordingly, Section 3024 applies to any custody order, not just a joint custody order. See also Section 3131 (action by district attorney where child taken or detained in violation of custody order).

**§ 3025. Parental access to records**

**Comment.** Section 3025 is the same as subdivision (f) of former Civil Code Section 4600.5. Although former Civil Code Section 4600.5 related to joint custody, subdivision (f) of that section (continued in Section 3025) was not by its terms limited to a joint custody order. Accordingly, Section 3025 applies whether or not custody is pursuant to a joint custody order.

**§ 3026. Family reunification services**

**Comment.** Section 3026 continues former Civil Code Section 4609 with the substitution of "this code" in Section 3026 for "this part," meaning the former Family Law Act, former Part 5 (commencing with Section 4000) of Division 4 of the Civil Code which appeared in former Civil Code Section 4609.

**§ 3027. Monetary sanction for false accusation of child abuse or neglect**

**Comment.** Section 3027 continues former Civil Code Section 4611 without substantive change except that the section is made applicable to any child custody proceeding "under this code."

**§ 3028. Compensation for failure to assume caretaker responsibility or for thwarting other parent's visitation or custody rights**

**Comment.** Section 3028 continues subdivision (b) of former Civil Code Section 4700 (as amended by 1990 Cal. Stat. ch. 1493, § 6) without substantive change, except that Section 3028 covers visitation or custody rights contemplated by any custody or visitation order entered "under this code." Subdivision (b) of former Section 4700 covered an order "under this part," meaning the former Family Law Act, former Part 5 (commencing with Section 4000) of Division 4 of the Civil Code. See also Section 105 ("joint legal custody" defined).

**CHAPTER 2. MATTERS TO BE CONSIDERED IN AWARDING CUSTODY****§ 3040. Order of preference in awarding custody**

**Comment.** Section 3040 continues subdivisions (b) and (d) of former Civil Code Section 4600 without substantive change. The word "child" is substituted for the phrase "child or children." This is not a substantive change. See Section 10 (singular includes the plural). See also Sections 105 ("joint legal custody" defined), 110 ("joint physical custody" defined), 215 (factors to be considered in determining best interest of child), 3131 (action by district attorney where child taken or detained in violation of custody order).

**§ 3041. Additional requirements for custody award to nonparent**

**Comment.** Section 3041 continues subdivision (c) of former Civil Code Section 4600 without substantive change. See also Section 215 (factors to be considered in determining best interest of child).

**§ 3042. Wishes of child**

**Comment.** Section 3042 is the same as the third sentence of subdivision (a) of former Civil Code Section 4600.

**§ 3043. Nomination of guardian by parent**

**Comment.** Section 3043 is the same as the last sentence of subdivision (a) of former Civil Code Section 4600. Section 3043 makes clear that a nomination under the Probate Code provisions is to be considered and given due weight, regardless of the nature of the custody proceeding. For background on former Civil Code Section 4600, see *Recommendation Relating to Guardianship-Conservatorship Law*, 14 Cal. L. Revision Comm'n Reports 501 (1978).

**§ 3044. Parent convicted under Penal Code provisions**

**Comment.** Section 3044 is the same as former Civil Code Section 4610. See also Section 3100(b) (visitation limited to situations in which third person present).

## CHAPTER 3. TEMPORARY CUSTODY ORDER DURING PENDENCY OF PROCEEDING

**§ 3060. Petition for temporary custody order**

**Comment.** Section 3060 is the same as subdivision (a) of former Civil Code Section 4600.1. See also Sections 3131 (action by district attorney where child taken or detained in violation of custody order), 3133 (temporary custody order at request of district attorney). As to jurisdiction of the court, see Sections 3400-3425 (Uniform Child Custody Jurisdiction Act).

**§ 3061. Order for temporary custody in accordance with agreement or understanding of parties**

**Comment.** Section 3061 is the same as subdivision (b) of former Civil Code Section 4600.1.

**§ 3062. Ex parte order and order to show cause**

**Comment.** Section 3062 is the same as subdivisions (c) and (d) of former Civil Code Section 4600.1. The word "child" is substituted for the phrase "child or children." This is not a substantive change. See Section 10 (singular includes the plural). See also Section 3130 (action by district attorney to locate missing party and child and to procure compliance with order to appear).

**§ 3063. Order restraining removal of child from state**

**Comment.** Section 3063 is the same as the first sentence of subdivision (e) of former Civil Code Section 4600.1. See also Section 3131 (action by district attorney where child taken or detained in violation of custody order).

**§ 3064. Limitation on ex parte order granting or modifying custody order**

**Comment.** Section 3064 is the same as the second and third sentences of subdivision (e) of former Civil Code Section 4600.1. See also Section 70 ("domestic violence" defined).

## CHAPTER 4. JOINT CUSTODY

**§ 3080. Presumption for joint custody where parents agree to joint custody**

**Comment.** Section 3080 is the same as subdivision (a) of former Civil Code Section 4600.5. See Section 100 ("joint custody" defined). See also Sections 215 (factors to be considered in determining best interest of child), 3131 (action by district attorney where child taken or detained in violation of custody order).

**§ 3081. Award of joint custody absent agreement of parents**

**Comment.** Section 3081 is the same as subdivision (b) of former Civil Code Section 4600.5. See Section 100 ("joint custody" defined). See also Section 3131 (action by district attorney where child taken or detained in violation of custody order); Code Civ. Proc. § 917.7 (order not automatically stayed by appeal).

**§ 3082. Statement by court of reasons for grant or denial of joint custody request**

**Comment.** Section 3082 continues subdivision (c) of former Civil Code Section 4600.5 without substantive change. See also Sections 100 ("joint custody" defined), 110 ("joint physical custody" defined), 215 (factors to be considered in determining best interest of child).

**§ 3083. Content and effect of joint legal custody order**

**Comment.** Section 3083 is the same as subdivision (e) of former Civil Code Section 4600.5. See also Section 105 ("joint legal custody" defined); Code Civ. Proc. § 917.7 (order not automatically stayed by appeal).

**§ 3084. Content of joint physical custody order**

**Comment.** Section 3084 is the same as subdivision (f) of former Civil Code Section 4600.5. See also Section 110 ("joint physical custody" defined).



**§ 3085. Awarding joint legal custody without joint physical custody**

**Comment.** Section 3085 is the same as subdivision (g) of former Civil Code Section 4600.5. See also Sections 105 ("joint legal custody" defined), 110 ("joint physical custody" defined).

**§ 3086. Order may specify one parent as primary caretaker of child**

**Comment.** Section 3086 is the same as subdivision (h) of former Civil Code Section 4600.5. See also Sections 105 ("joint legal custody" defined), 110 ("joint physical custody" defined), 3028 (compensation for failure to assume caretaker responsibility).

**§ 3087. Modification or termination of joint custody order**

**Comment.** Section 3087 continues subdivision (i) of former Civil Code Section 4600.5 without substantive change. See also Sections 100 ("joint custody" defined), 215 (factors to be considered in determining best interest of child); Code Civ. Proc. § 917.7 (order not automatically stayed by appeal).

**§ 3088. Modification to make custody order a joint custody order**

**Comment.** Section 3088 is the same as subdivision (j) of former Civil Code Section 4600.5. See also Section 100 ("joint custody" defined).

**§ 3089. Consultation with conciliation court**

**Comment.** Section 3089 is the same as subdivision (k) of former Civil Code Section 4600.5.

## CHAPTER 5. VISITATION RIGHTS

**§ 3100. Visitation rights generally**

**Comment.** Subdivision (a) of Section 3100 continues former Civil Code Section 4601 without substantive change. Mediation of the custody or visitation issue is required by Chapter 11 (commencing with Section 3155). See also Sections 215 (factors to be considered in determining best interest of child), 3131 (action by district attorney where child taken or detained in violation of visitation order); Code Civ. Proc. § 917.7 (order not automatically stayed by appeal).

Subdivision (b) continues former Civil Code Section 4601.5 (as amended by 1991 Cal. Stat. ch. 321, § 1) without substantive change. See also Sections 75 ("domestic violence prevention order" defined), 3044 (parent convicted under certain Penal Code provisions not to be allowed unsupervised visitation with child). For comparable provisions, see Sections 1704(b) and 5513.

**§ 3101. Determination of visitation rights of stepparent or grandparent in marriage dissolution or nullity proceeding**

**Comment.** Section 3101 continues subdivisions (a), (b), (j), (k), and (l) of former Civil Code Section 4351.5 without substantive change. See also Section 200 (jurisdiction in superior court). Mediation of the visitation issue is required by Chapter 11 (commencing with Section 3155). See also Sections 75 ("domestic violence prevention order" defined), 215 (factors to be considered in determining best interest of child); Code Civ. Proc. § 917.7 (order not automatically stayed by appeal).

**§ 3102. Visitation rights where father or mother of unmarried minor child is deceased**

**Comment.** Section 3102 continues former Civil Code Section 197.5 without substantive change. See section 200 (jurisdiction in superior court). See also Section 215 (factors to be considered in determining best interest of child); Code Civ. Proc. § 917.7 (order not automatically stayed by appeal).

## CHAPTER 6. CUSTODY INVESTIGATION AND REPORT

**§ 3110. Custody investigation and report**

**Comment.** Section 3110 continues the first paragraph of former Civil Code Section 4602 (as amended by 1991 Cal. Stat. ch. 410, § 1) with the substitution in the introductory portion of the section of "under this code" for "under this part," meaning the former Family Law Act, former Part 5 (commencing with Section 4000) of Division 4 of the Civil Code. See also Section 3081 (investigation concerning whether joint custody award would be appropriate). The provisions of this chapter supersede former Code of Civil Procedure Section 263.

**§ 3111. Separate meetings where history of domestic violence or domestic violence prevention order**

**Comment.** Section 3111 continues the second paragraph of former Civil Code Section 4602 (as amended by 1991 Cal. Stat. ch. 410, § 1) without substantive change. See also Sections 70 ("domestic violence" defined), 75 (domestic violence prevention order" defined).

**§ 3112. Repayment of county for investigation or visitation work**

**Comment.** Section 3112 is the same as the third paragraph of former Civil Code Section 4602 (as amended by 1991 Cal. Stat. ch. 410, § 1).

**§ 3113. Recommendation for appointment of counsel for minor child**

**Comment.** Section 3113 is the same as the last paragraph of former Civil Code Section 4602 (as amended by 1991 Cal. Stat. ch. 410, § 1). The word "child" is substituted for the phrase "child or children." This is not a substantive change. See Section 10 (singular includes the plural). See also Section 215 (factors to be considered in determining best interest of child).

## CHAPTER 7. ACTION FOR EXCLUSIVE CUSTODY

**§ 3120. Independent action for exclusive custody**

**Comment.** Section 3120 continues former Civil Code Section 4603 without substantive change. See also Section 215 (factors to be considered in determining best interest of child); Code Civ. Proc. § 917.7 (order not automatically stayed by appeal).

## CHAPTER 8. LOCATION OF MISSING PARTY OR CHILD

**§ 3130. Action by district attorney to locate missing party and child and to procure compliance with order to appear**

**Comment.** Section 3130 is the same as subdivision (a) of former Civil Code Section 4604.

**§ 3131. Action by district attorney where child taken or detained in violation of custody or visitation order**

**Comment.** Section 3131 continues subdivision (b) of former Civil Code Section 4604 without substantive change.

**§ 3132. District attorney acts on behalf of court**

**Comment.** Section 3132 is the same as first sentence of subdivision (c) of former Civil Code Section 4604.

**§ 3133. Temporary custody order upon request of district attorney**

**Comment.** Section 3133 continues the second and third sentences of subdivision (c) of former Civil Code Section 4604 without substantive change. See also Sections 140 ("sole physical custody" defined), 215 (factors to be considered in determining best interest of child).

**§ 3134. Payment of district attorney's expenses**

**Comment.** Section 3134 is the same as former Civil Code Section 4605.

## CHAPTER 9. CHECK TO DETERMINE WHETHER CHILD IS MISSING PERSON

**§ 3140. Submission of child's birth certificate to court if parent has not appeared in proceeding; check to determine if child is missing person**

**Comment.** Section 3140 continues former Civil Code Section 4604.5 without substantive change. See also Sections 1703 (Section 3140 applies to proceedings pursuant to Uniform Parentage Act), 3415 (Section 3140 applies to proceedings pursuant to the Uniform Child Custody Jurisdiction Act); Welf. & Inst. Code § 11478.5 (California Parent Locator Service).

## CHAPTER 10. APPOINTMENT OF COUNSEL TO REPRESENT CHILD

**§ 3150. Appointment of private counsel to represent child in custody or visitation proceeding**

**Comment.** Section 3150 is the same as subdivisions (a) and (b) of former Civil Code Section 4606. See Section 2010 (authority of court). See also Section 215 (factors to be considered in determining best interest of child).

**§ 3151. Rights and duties of appointed counsel**

**Comment.** Section 3151 continues subdivisions (c) and (d) of former Civil Code Section 4606 without substantive change.

**§ 3152. Release to counsel of reports and files of child protective agency**

**Comment.** Section 3152 is the same as subdivision (e) former Civil Code Section 4606. The word "reports" has been substituted for "records" in subdivision (c) to conform to subdivisions (a) and (b).

**§ 3153. Compensation of appointed counsel**

**Comment.** Section 3153 continues subdivisions (f) and (g) of former Civil Code Section 4606 without substantive change.

## CHAPTER 11. MEDIATION OF CONTESTED VISITATION OR CUSTODY ISSUES

## Article 1. General Provisions

**§ 3155. Mediator to be available; qualifications of mediator**

**Comment.** Section 3155 continues subdivision (b) of former Civil Code Section 4607 (as amended by 1991 Cal. Stat. ch. 410, § 2) and the last sentence of subdivision (c) of former Civil Code Section 4351.5. See also Section 1816 (continuing instruction programs in domestic violence).

**§ 3156. Confidentiality of mediation proceeding**

**Comment.** Section 3156 continues subdivision (d) of former Civil Code Section 4351.5 and subdivision (c) of former Civil Code Section 4607 (as amended by 1991 Cal. Stat. ch. 410, § 2) without substantive change. See also Section 1819 (destruction of records of child custody or visitation mediation).

**§ 3157. Assessment of needs and interests of child**

**Comment.** Section 3157 continues the second sentence of subdivision (e) of former Civil Code Section 4351.5 and second sentence of subdivision (d) of former Civil Code Section 4607 (as amended by 1991 Cal. Stat. ch. 410, § 2) without substantive change.

The word "child" is substituted for the phrase "child or children" which was used in former Section 4607. This is not a substantive change. See Section 10 (singular includes the plural).

**§ 3158. Exclusion of counsel from mediation proceeding**

**Comment.** Section 3158 continues the first sentence of subdivision (e) of former Civil Code Section 4351.5 and first sentence of subdivision (d) of former Civil Code Section 4607 (as amended by 1991 Cal. Stat. ch. 410, § 2) without substantive change.

**§ 3159. Recommendations to court**

**Comment.** Section 3159 continues the first three sentences of subdivision (f) of Civil Code Section 4351.5 and the first three sentences of subdivision (e) of former Civil Code Section 4607 (as amended by 1991 Cal. Stat. ch. 410, § 2) without substantive change except that the provision of subdivision (b) that the mediator may recommend to the court that "other action be taken" to assist the parties to effect a resolution of the controversy and the provision that restraining orders (rather than "mutual" restraining orders) be issued formerly applied only to mediation proceedings under what is now Article 2 (commencing with Section 3170).

**§ 3160. Agreement reached by parties as result of mediation**

**Comment.** Section 3160 continues the fourth, sixth, and seventh sentences of subdivision (f) of former Civil Code Section 4351.5 and the fourth, sixth, and seventh sentences of subdivision (e) of former Civil Code Section 4607 (as amended by 1991 Cal. Stat. ch. 410, § 2). See also Section 1819 (destruction of records of child custody or visitation mediation).

**§ 3161. Uniform standards of practice for mediation**

**Comment.** Section 3161 continues former Civil Code Section 4607.1 with revisions that recognize that the Judicial Council has adopted the uniform standards of practice. See also Sections 215 (factors to be considered in determining best interest of child), 1819 (destruction of records of child custody or visitation mediation), 1850 (statewide coordination of family mediation and conciliation services).

**§ 3162. Local court rules**

**Comment.** Section 3162 is the same as subdivision (g) of former Civil Code Section 4607 (as amended by 1991 Cal. Stat. ch. 410, § 2).

**Article 2. Mediation Where Issuance or  
Modification of Custody or Visitation Order Requested**

**§ 3170. Mediation required**

**Comment.** Section 3170 continues the substance of the first sentence of subdivision (a) of former Civil Code Section 4607 (as amended by 1991 Cal. Stat. ch. 410, § 2) except that the reference in the former provision to cases where the custody or visitation issue or both issues are contested "as provided in Section 4600, 4600.1, or 4601" has been omitted as unnecessary. The word "child" is substituted for the phrase "child or children." This is not a substantive change. See Section 10 (singular includes the plural).

**§ 3171. Mediation of dispute concerning existing order**

**Comment.** Section 3171 continues the second sentence of subdivision (a) of former Civil Code Section 4607 (as amended by 1991 Cal. Stat. ch. 410, § 2) without substantive change.

**§ 3172. Purpose of mediation proceeding**

**Comment.** Section 3172 continues the third and fourth sentences of subdivision (a) of former Civil Code Section 4607 (as amended by 1991 Cal. Stat. ch. 410, § 2) without substantive change. The word "child" is substituted for the phrase "child or children." This is not a substantive change. See Section 10 (singular includes the plural). See also Section 215 (factors to be considered in determining best interest of child).

**§ 3173. Mediation available even where paternity is at issue**

**Comment.** Section 3173 is the same as the fifth sentence of subdivision (a) of former Civil Code Section 4607 (as amended by 1991 Cal. Stat. ch. 410, § 2).

**§ 3174. Recommendations that counsel be appointed for minor child**

**Comment.** Section 3174 continues subdivision (f) of former Civil Code Section 4607 (as amended by 1991 Cal. Stat. ch. 410, § 2) without substantive change. The word "child" is substituted for the phrase "child or children." This is not a substantive change. See Section 10 (singular includes the plural). See also Section 215 (factors to be considered in determining best interest of child).

**§ 3175. Agreements reached by parties as result of mediation**

**Comment.** Section 3175 continues the fifth and eighth sentences of subdivision (e) of former Civil Code Section 4607 (as amended by 1991 Cal. Stat. ch. 410, § 2) without substantive change.

**§ 3176. Separate mediation permitted where history of domestic violence**

**Comment.** Section 3176 continues the third sentence of subdivision (d) of former Civil Code Section 4607 (as amended by 1991 Cal. Stat. ch. 410, § 2) without substantive change. See also Section 70 ("domestic violence" defined).

**§ 3177. Separate mediation where domestic violence prevention order**

**Comment.** Section 3177 is the same in substance as former Civil Code Section 4607.2 (as amended by 1991 Cal. Stat. ch. 410, § 3). See also Sections 70 ("domestic violence" defined), 75 ("domestic violence prevention order" defined).

**Article 3. Mediation of Stepparent or Grandparent Visitation****§ 3180. Mediation where stepparent or grandparent visitation order requested in dissolution or nullity proceeding**

**Comment.** Subdivision (a) of Section 3180 is the same as the first two sentences of subdivision (c) of former Civil Code Section 4351.5. Subdivision (b) is the same as subdivision (g) of former Civil Code Section 4351.5. See also Section 215 (factors to be considered in determining best interest of child).

**§ 3181. Agreement reached by parties as result of mediation**

**Comment.** Section 3181 is the same as the fifth and eighth sentences of subdivision (f) of former Civil Code Section 4351.5.

**§ 3182. Hearing on visitation rights**

**Comment.** Section 3182 is the same as subdivision (h) of former Civil Code Section 4351.5.

**§ 3183. Notice of mediation or hearing**

**Comment.** Section 3183 continues subdivision (i) of former Civil Code Section 4351.5 without substantive change.

**CHAPTER 12. COUNSELING OF PARENTS AND CHILD****§ 3190. Order requiring counseling**

**Comment.** Section 3190 continues the first paragraph of subdivision (a) of former Civil Code Section 4608.1 (as amended by 1991 Cal. Stat. ch. 410, § 4) without substantive change. See Section 215 (factors to be considered in determining best interest of child).

**§ 3191. Purpose of counseling**

**Comment.** Section 3191 is the same as the second paragraph of subdivision (a) of former Civil Code Section 4608.1 (as amended by 1991 Cal. Stat. ch. 410, § 4). See also Section 215 (factors to be considered in determining best interest of child).

**§ 3192. Separate counseling where protective order against domestic violence**

**Comment.** Section 3192 continues subdivision (b) of former Civil Code Section 4608.1 (as amended by 1991 Cal. Stat. ch. 410, § 4) without substantive change. See also Sections 70 ("domestic violence" defined), 75 ("domestic violence prevention order" defined).

**PART 3. UNIFORM CHILD CUSTODY JURISDICTION ACT****§ 3400. Short title**

**Comment.** Section 3400 is the same as former Civil Code Section 5174. See also Sections 3 (construction of provision drawn from uniform act), 14 (severability of provisions).

**§ 3401. Purposes of act**

**Comment.** Section 3401 continues former Civil Code Section 5150 without substantive change. See also Section 3 (construction of provisions drawn from uniform act).

**§ 3402. Definitions**

**Comment.** Section 3402 continues former Civil Code Section 5151 without change.

**§ 3403. Jurisdictional requirements**

**Comment.** Section 3403 is the same as former Civil Code Section 5152. See also Section 215 (factors to be considered in determining best interest of child).

**§ 3404. Notice and opportunity to be heard**

**Comment.** Section 3404 is the same as former Civil Code Section 5153.

**§ 3405. Notice to person outside this state; submission to jurisdiction**

**Comment.** Section 3405 is the same as former Civil Code Section 5154.

**§ 3406. Simultaneous proceedings in other states**

**Comment.** Section 3406 continues former Civil Code Section 5155 without substantive change.

**§ 3407. Inconvenient forum**

**Comment.** Section 3407 continues former Civil Code Section 5156 without substantive change.

**§ 3408. Jurisdiction declined by reason of conduct**

**Comment.** Section 3408 is the same as former Civil Code Section 5157.

**§ 3409. Information to be provided to court**

**Comment.** Section 3409 continues former Civil Code Section 5158 without substantive change. See also Section 3060 (temporary custody order).

**§ 3410. Additional parties**

**Comment.** Section 3410 is the same as former Civil Code Section 5159.

**§ 3411. Appearance of parties and child**

**Comment.** Section 3411 is the same in substance as former Civil Code Section 5160.

**§ 3412. Binding force and res judicata effect of custody decree**

**Comment.** Section 3412 is the same as former Civil Code Section 5161.

**§ 3413. Recognition of out-of-state custody decree**

**Comment.** Section 3413 is the same as former Civil Code Section 5162.

**§ 3414. Modification of custody decree of another state**

**Comment.** Section 3414 is the same as former Civil Code Section 5163.

**§ 3415. Submission of child's birth certificate to court; check to determine if child is missing person**

**Comment.** Section 3415 is the same as former Civil Code Section 5163.5. Section 3415 is the same as Section 1703 (Uniform Parentage Act).

**§ 3416. Filing and enforcement of custody decree of another state**

**Comment.** Section 3416 is the same as former Civil Code Section 5164.

**§ 3417. Registry of out-of-state custody decrees and proceedings**

**Comment.** Section 3417 continues former Civil Code Section 5165 without substantive change.

**§ 3418. Certified copy of custody decree**

**Comment.** Section 3418 is the same as former Civil Code Section 5166.

**§ 3419. Taking testimony in another state**

**Comment.** Section 3419 is the same as former Civil Code Section 5167.

**§ 3420. Hearings and studies in another state; orders to appear**

**Comment.** Section 3420 is the same as former Civil Code Section 5168.

**§ 3421. Assistance to courts of other states**

**Comment.** Section 3421 is the same in substance as former Civil Code Section 5169.

**§ 3422. Preservation of records; forwarding to another state**

**Comment.** Section 3422 continues former Civil Code Section 5170 without substantive change.

**§ 3423. Request for court records of another state**

**Comment.** Section 3423 is the same as former Civil Code Section 5171.

**§ 3424. International application**

**Comment.** Section 3424 is the same as former Civil Code Section 5172.

**§ 3425. Calendar priority**

**Comment.** Section 3425 is the same as former Civil Code Section 5173.

COMMENTS TO AB 2650



## DIVISION 9. SUPPORT

### PART 1. DEFINITIONS AND GENERAL PROVISIONS

#### CHAPTER 1. DEFINITIONS

##### § 3500. Application of definitions

**Comment.** Section 3500 is new. This chapter supplements the general definitions in Part 2 (commencing with Section 50) of Division 1 with special definitions that apply only to this division. For general definitions frequently used in this division, see Sections 92 ("family support"), 142 ("spousal support"), 150 ("support"), and 155 ("support order"). See also Section 11 (reference to married person includes formerly married person).

##### § 3515. Separate property

**Comment.** Section 3515 continues former Civil Code Section 4804 without substantive change insofar as it applied to support. For a comparable provision applicable to division of property, see Section 2502. See also Section 125 ("quasi-community property" defined). Compare Section 130 ("separate property" defined).

#### CHAPTER 2. GENERAL PROVISIONS

##### § 3550. Presence or residence of obligor in state

**Comment.** Section 3550(a)(1) continues subdivision (c) of former Civil Code Section 241 without substantive change. Section 3550(a)(2) continues subdivision (b) of former Civil Code Section 241 without substantive change. Section 3550(b) continues former Civil Code Section 244 without substantive change.

##### § 3551. Competency of spouse to testify

**Comment.** Section 3551 continues former Civil Code Section 250 without substantive change. For a similar provision, see Section 4839 (Uniform Reciprocal Enforcement of Support Act).

##### § 3552. Tax returns of parties

**Comment.** Section 3552 continues former Civil Code Section 4700.7 without substantive change except that the rule has been expanded to apply to family support. See also Sections 3629 (tax returns in proceeding for expedited support order), 3665 (tax returns in discovery proceedings for modification or termination of support order), 3689 (tax returns in simplified procedure for modification of support order).

##### § 3554. Appeals

**Comment.** Section 3554 continues former Civil Code Section 249 without substantive change. See also Code Civ. Proc. § 904.1 (appeal may be taken from order made appealable by provisions of Family Code).

##### § 3555. Forwarding support paid through designated county officer

**Comment.** Section 3555 continues former Civil Code Section 4390.18 which may have been limited in its application to payments made pursuant to an earnings assignment order. Section 3555, on the other hand, applies to any support paid to a designated county officer, whether or not paid pursuant to an earnings assignment order. See also Sections 3752 (providing district attorney designated as assigned payee with information concerning health insurance coverage for child), 4200-4203 (designation of county officer to be paid child support payments), 4350-4352 (designation of county officer to be paid spousal support payments), 4573 (payment where support paid through district attorney for child not receiving public assistance), 5237 (designated payee to notify designated county officer of change of address).

**§ 3556. Effect of failure to implement custody or visitation rights**

**Comment.** Section 3556 continues former Civil Code Section 4382 without substantive change.

**CHAPTER 3. SUPPORT AGREEMENTS****Article 1. General Provisions****§ 3580. Provisions for spousal and child support in separation agreement**

**Comment.** Section 3580 continues the last portion of former Civil Code Section 4802 without substantive change. See also Sections 1620 (limitation of extent to which contract may alter spouses' legal relations), 3592 (obligations under property settlement agreement discharged in bankruptcy), 4302 (no support for spouse living separate from other spouse by agreement unless support provided for in agreement), 4323 (agreement concerning effect of cohabitation on spousal support).

**Article 2. Child Support****§ 3585. Support order based on agreement between parents**

**Comment.** Section 3585 continues the first two sentences of subdivision (a) of former Civil Code Section 4811 without substantive change. The phrase "based on the agreement" has been added to the second sentence. See also Sections 3007 (support order to be included in order awarding custody to parent receiving assistance pursuant to Burton-Miller Act), 3651 (modification or termination of child or family support order based upon an agreement between the parents), 4012 (child support obligation discharged in bankruptcy). For a comparable provision relating to spousal support, see Section 3590. As to property settlements entered into before January 1, 1970, see Section 3581. See also Section 273 (attorney's fees for enforcement of support order).

**§ 3586. Court order to effectuate family support agreement**

**Comment.** Section 3586 continues the first sentence of subdivision (d) of former Civil Code Section 4811 without substantive change. See also Sections 92 ("family support" defined), 273 (attorney's fees for enforcement of support order), 3007 (support order to be included in order awarding custody to parent receiving assistance pursuant to Burton-Miller Act), 3592 (obligations under property settlement agreement discharged in bankruptcy), 4500 (enforcement of support order).

**§ 3587. Court order to effectuate agreement for support for adult child**

**Comment.** Section 3587 continues the first sentence of former Civil Code Section 4700.9 without substantive change. The language "and to make a support order to effectuate the agreement" new but was implied by the second sentence of former Section 4700.9, superseded by Section 4500 of the Family Code. See also Sections 273 (attorney's fees for enforcement of support order), 3901 (duty to support high school student), 3910 (duty to support adult incapacitated child), 4500 (enforcement of support order).

**Article 3. Spousal Support****§ 3590. Support agreement severable and enforceable by court**

**Comment.** Section 3590 continues the substance of the first two sentences of subdivision (b) of former Civil Code Section 4811. For a comparable provision relating to child support, see Section 3585.

Absent a written agreement otherwise, spousal support terminates upon death of either party or upon remarriage of the supported party. See Section 4337. See also Sections 273 (attorney's fees for enforcement of support order), 3592 (obligations under property settlement agreement discharged in bankruptcy), 4302 (no support for spouse living separate from other spouse by agreement unless support provided for in agreement), 4336 (written agreement of parties to termination of spousal

support retained jurisdiction), 4323 (agreement concerning effect of cohabitation on spousal support), 4360(b) agreement that annuity, life insurance, or trust for spousal support may not be modified or terminated).

**§ 3591. Authority to modify or terminate spousal support agreement**

**Comment.** Subdivisions (a) and (b) of Section 3591 continue a portion of the third sentence of subdivision (b) of former Civil Code Section 4811 without substantive change insofar as that sentence applied to a spousal support agreement. See also Sections 3592 (obligations under property settlement agreement discharged in bankruptcy), 3651 (modification or termination of order for spousal support).

Subdivision (c) continues subdivision (c) of former Civil Code Section 4811 without substantive change insofar as it applied to the provisions of subdivision (a) and (b).

**§ 3592. Agreement discharged in bankruptcy**

**Comment.** Section 3592 continues the substance of former Civil Code Section 4812. See also Section 4320 (circumstances to be considered in ordering spousal support). Compare Section 4013 (child support obligation discharged in bankruptcy).

**CHAPTER 4. SPOUSAL AND CHILD SUPPORT DURING PENDENCY OF PROCEEDING**

**§ 3600. Order for support during pendency of proceeding**

**Comment.** Section 3600 continues the first sentence of subdivision (a) of former Civil Code Section 4357 without substantive change. Some of the language of Section 3600 is drawn from the first sentence of paragraph (1) of subdivision (a) of former Civil Code Section 4700 (as amended by 1990 Cal. Stat. ch. 1493, § 6) with the addition of language to make clear that Section 3600 applies to a child for whom support is authorized under Section 3901. As to the requirement of notice of hearing, see Code Civ. Proc. § 527. See also Sections 273 (attorney's fees for enforcement of support order), 2254 (order for support of putative spouse), 3007 (support order to be included in order awarding custody to parent receiving assistance pursuant to Burton-Miller Act).

The word "support" is substituted for "support and maintenance" with reference to support of the wife or husband. This is not a substantive revision. See also Section 150 (when used with reference to minor child, "support" includes maintenance and education). The reference to the "superior" court is omitted as unnecessary in view of Section 200.

**§ 3601. Child support order continues in effect until terminated by court or by operation of law**

**Comment.** Section 3601 continues the first sentence of subdivision (b) of former Civil Code Section 4357 without substantive change.

**§ 3602. Order not enforceable where parties are reconciled and living together**

**Comment.** Section 3602 continues the second sentence of subdivision (b) of former Civil Code Section 4357 without substantive change.

**§ 3603. Modification or termination of order**

**Comment.** Section 3603 continues the third sentence of subdivision (a) of former Civil Code Section 4357 without substantive change. For general provisions relating to modification or termination of support orders, see Sections 3650-3694.

**§ 3604. Rights with respect to subsequent order not prejudiced**

**Comment.** Section 3604 continues the second sentence of subdivision (a) of former Civil Code Section 4357 without substantive change.

## CHAPTER 5. EXPEDITED CHILD SUPPORT ORDER

**§ 3620. Designation of order as expedited support order**

**Comment.** Section 3620 continues the second sentence of subdivision (a) of former Civil Code Section 4357.5 without substantive change.

**§ 3621. Court order, made without hearing, requiring child support during pendency of action; amount of support**

**Comment.** Section 3621 continues the first sentence of subdivision (a) of former Civil Code Section 4357.5 without substantive change. A reference to Section 4053 (which continues without substantive change subdivisions (a) and (b) of former Civil Code Section 4720.2, which was added by 1991 Cal. Stat. ch. 110, § 13) has been substituted for the reference to former Civil Code Section 4722 which was found in subdivision (a) of former Civil Code Section 4357.5. See also Section 150 ("support" includes maintenance and education).

**§ 3622. Application for order**

**Comment.** Section 3622 continues the first sentence of subdivision (b) of former Civil Code Section 4357.5 without substantive change. A reference to Section 4053 (which continues without substantive change subdivisions (a) and (b) of former Civil Code Section 4720.2, which was added by 1991 Cal. Stat. ch. 110, § 13) has been substituted for the reference to former Civil Code Section 4722 which was found in subdivision (a) of former Civil Code Section 4357.5. See also Section 95 (Judicial Council form for income and expense declaration).

**§ 3623. Jurisdiction of court on application**

**Comment.** Section 3623 continues subdivision (f) of former Civil Code Section 4357.5 without substantive change.

**§ 3624. Order automatically becomes effective 30 days after required documents served unless response served by obligated parent**

**Comment.** Subdivision (a) of Section 3624 continues the third sentence of subdivision (b) of former Civil Code Section 4357.5 without substantive change. The language of the subdivision has been rephrased to adopt language used in the official Judicial Council form. See Application for Expedited Child Support Order (Family Law) (Form Adopted by Rule 12197 Judicial Council of California 1297) (New January 1, 1986). See also Section 95 (Judicial Council form for income and expense declaration).

Subdivision (b) of Section 3624 continues subdivision (c) of former Civil Code Section 4357.5 without substantive change. Subdivision (c) continues the fourth sentence of subdivision (b) of former Civil Code Section 4357.5 without substantive change.

**§ 3625. Obligated parent's response to application**

**Comment.** Section 3625 continues subdivision (d) of former Civil Code Section 4357.5 without substantive change. See also Section 95 (Judicial Council form for income and expense declaration).

**§ 3626. Setting application for hearing**

**Comment.** Section 3626 continues the first sentence of subdivision (e) of former Civil Code Section 4357.5 without substantive change.

**§ 3627. Giving notice of hearing**

**Comment.** Section 3627 continues the second sentence of subdivision (e) of former Civil Code Section 4357.5 without substantive change.

**§ 3628. Effect of failure to give notice of hearing**

**Comment.** Section 3628 continues the third sentence of subdivision (e) of former Civil Code Section 4357.5 without substantive change.

**§ 3629. Production of tax returns at hearing; effect of failure to produce required documents**

**Comment.** Section 3629 continues the subdivision (g) of former Civil Code Section 4357.5 without substantive change.

**§ 3630. Amount of support**

**Comment.** Subdivision (a) of Section 3630 continues the second sentence of subdivision (b) of former Civil Code Section 4357.5 without substantive change. Subdivision (b) continues the substance of subdivision (h) of former Civil Code Section 4357.5 without substantive change.

**§ 3631. Order after hearing**

**Comment.** Section 3631 continues the first sentence of subdivision (i) of former Civil Code Section 4357.5 without substantive change.

**§ 3632. Effective date of order after hearing**

**Comment.** Section 3632 continues the second sentence of subdivision (i) of former Civil Code Section 4357.5 without substantive change.

**§ 3633. Modification of order**

**Comment.** Section 3633 continues subdivision (j) of former Civil Code Section 4357.5 with the addition of the words "or terminated." For provisions relating to modification or termination of a support order, see Sections 3650-3694.

**§ 3634. Judicial Council to prepare necessary forms**

**Comment.** Section 3634 continues subdivision (k) of former Civil Code Section 4357.5 without substantive change. See also Section 95 (Judicial Council form for income and expense declaration).

## CHAPTER 6. MODIFICATION OR TERMINATION OF SUPPORT

## Article 1. General Provisions

**§ 3650. "Support order" defined**

**Comment.** Section 3650 is a new provision designed to facilitate drafting.

**§ 3651. Authority to modify or terminate**

**Comment.** Subdivisions (a) and (b) of Section 3651 continue the fifth sentence of paragraph (1) of subdivision (a) of former Civil Code Section 4700 (as amended by 1990 Cal. Stat. ch. 1493, § 6), the third sentence of the last paragraph of subdivision (a) of former Civil Code Section 4801 (as amended by 1991 Cal. Stat. ch. 1207, § 1), and a portion of the third sentence of subdivision (a) and a portion of the third sentence of subdivision (b) of former Civil Code Section 4811 without substantive change, except that the "subject to" clause of subdivision (a) (drawn from former Section 4811 which applied only to orders for child support) is extended to cover spousal support orders. Section 3651 supersedes former Civil Code Section 247. See also Section 3603 (modification or termination of order for child or spousal support during pendency of proceeding), 3653 (retroactivity of modification or termination). For other provisions, see Section 216 (service of notice prerequisite to validity of modification or subsequent order), Article 2 (commencing with Section 3660) (discovery prior to commencement of proceeding for modification of support order), Article 3 (commencing with Section 3680) (simplified method for modification of child support order).

Subdivision (c) continues a portion of the third sentence of subdivision (b) of former Civil Code Section 4811 without substantive change insofar as that sentence applied to a court order. The portion of that sentence of the former section that applied to provisions of a support agreement is continued in Section 3591.

Subdivision (d) continues a portion of the third sentence of subdivision (a) of former Civil Code Section 4811 ("even where there has been an agreement between the parties on the subject of child

support") without substantive change except that the provision is extended to include family support orders. See also Section 4300 (order for child support based on the agreement "shall be law-imposed and shall be made under the power of the court to make the order").

Subdivision (e) continues subdivision (c) of former Civil Code Section 481.1 without substantive change insofar as it applied to modification or termination of support orders.

Section 3651 applies whether or not the support order is based on an agreement between the parties. See subdivision (d). Accordingly, a child support order based on an agreement between the parties may be modified or terminated at any time as the court determines to be necessary. See subdivision (a). Likewise, a spousal support order based on an agreement between the parties may be modified or terminated at any time as the court determines to be necessary unless the agreement specifically provides that the spousal support is not subject to modification or termination. See subdivisions (a) and (c). See also Section 3591.

**§ 3652. Attorney's fees and court costs**

**Comment.** Section 3652 continues the seventh sentence of paragraph (1) of subdivision (a) of former Civil Code Section 4700 (as amended by 1990 Cal. Stat. ch. 1493, § 6) without substantive change. See also Section 273 (attorney's fees for enforcement of support order).

**§ 3653. Retroactivity of modification or termination**

**Comment.** Section 3653 continues without substantive change the sixth sentence of paragraph (1) of subdivision (a) of former Section 4700 (as amended by 1990 Cal. Stat. ch. 1493, § 6) insofar as it related to modification or termination of a support order and the last portion of the fifth sentence of the last paragraph of subdivisions (a) of former Civil Code Section 4801 (as amended by 1991 Cal. Stat. ch. 1207, § 1). See also Section 4008 (retroactivity of order making child support order), 4333 (retroactivity of order making spousal support order).

**§ 3654. Statement of decision**

**Comment.** Section 3654 continues the first portion of the fifth sentence of the last paragraph of subdivision (a) of former Civil Code Section 4801 (as amended by 1991 Cal. Stat. ch. 1207, § 1) without substantive change.

**Article 2. Discovery Before  
Commencing Modification or Termination Proceeding**

**§ 3660. Purpose of article**

**Comment.** Section 3660 continues subdivision (a) of former Civil Code Section 4700.2 and subdivision (a) of former Civil Code Section 4801.1 without substantive change. The phrase "or termination" has been added to make clear that this article applies to a proceeding for termination of a support order.

**§ 3662. Limitation on use of other methods of discovery**

**Comment.** Section 3662 continues the second sentence of subdivision (b) of former Civil Code Section 4700.2 and the second sentence of subdivision (b) of former Civil Code Section 4801.1 without substantive change.

**§ 3663. Limitation on use of discovery under this article**

**Comment.** Subdivision (a) of Section 3663 continues the third sentence of subdivision (b) of former Civil Code Section 4700.2 and the third sentence of subdivision (b) of former Civil Code Section 4801.1 without substantive change, except that Section 3663 makes clear that only one request for discovery may be undertaken within a one-year period, even though there is a separate child support order and a separate spousal support order.

**§ 3664. Request for production of income and expense declaration**

**Comment.** Subdivision (a) of Section 3664 continues the first sentence of subdivision (b) of former Civil Code Section 4700.2 and the first sentence of subdivision (b) of former Civil Code Section 4801.1 without substantive change. See also Section 3661 ("support" means child or family support or spousal support). See also Section 95 (Judicial Council form for income and expense declaration).

Subdivision (b) of Section 3664 continues subdivision (d) of former Civil Code Section 4700.2 and subdivision (d) of former Civil Code Section 4801.1 without substantive change.

**§ 3665. Tax returns**

**Comment.** Section 3665 continues subdivision (c) of former Civil Code Section 4700.2 and subdivision (c) of former Civil Code Section 4801.1 without substantive change. See also Section 95 (Judicial Council form for income and expense declaration).

**§ 3666. Enforcement**

**Comment.** Section 3666 continues the fourth sentence of subdivision (b) of former Civil Code Section 4700.2 and the fourth sentence of subdivision (b) of former Civil Code Section 4801.1 without substantive change. See also Section 273 (attorney's fees for enforcement of support order).

**§ 3667. Sanctions**

**Comment.** Section 3667 continues subdivision (e) of former Civil Code Section 4700.2 and subdivision (e) of former Civil Code Section 4801.1 without substantive change. See also Section 95 (Judicial Council form for income and expense declaration).

**§ 3668. Forms**

**Comment.** Section 3668 continues the fifth sentence of subdivision (b) of former Civil Code Section 4700.2 and the fifth sentence of subdivision (b) of former Civil Code Section 4801.1 without substantive change.

**Article 3. Simplified Procedure for Modification of Support Order****§ 3680. Purpose of article**

**Comment.** Section 3680 continues subdivision (a) of former Civil Code Section 4700.1 and subdivision (a) of former Civil Code Section 4801.9 without substantive change, except that the article is made applicable to "family support" orders.

**§ 3681. Notifying other party of address changes**

**Comment.** Section 3681 continues the third sentence of former Civil Code Section 4700.1(e) and the third sentence of former Civil Code Section 4801.9(e) without substantive change. See also Section 5237 (designated payee to notify designated county officer of change of address).

**§ 3682. Limitation on use of procedure under this article**

**Comment.** Section 3682 continues the first sentence of subdivision (d) of former Civil Code Section 4700.1 and the first sentence of subdivision (d) of former Civil Code Section 4801.9 without substantive change. Although Section 3682 limits modifications pursuant to this article to one per year, this limitation does not apply to a modification based on a significant decrease in the income of the moving party. See also Section 3688 (modification based on significant decrease in income of the moving party).

**§ 3683. Notice of motion to modify support order**

**Comment.** Section 3683 continues the first three sentences of subdivision (b) of former Civil Code Section 4700.1 and the first three sentences of subdivision (b) of former Civil Code Section 4801.9 without substantive change. See also Section 3690 (manner of service of notice).

In computing the one-year period under subdivision (a) in the case of a support order previously modified, the one-year period commences to run from the date of entry of the latest modification of the support order, not from the date the original support order was entered.

**§ 3684. Objection and request for hearing**

**Comment.** Subdivision (a) of Section 3684 continues the fourth, fifth, and sixth sentences of subdivision (b) of former Civil Code Section 4700.1 and the fourth, fifth, and sixth sentences of subdivision (b) of former Civil Code Section 4801.9 without substantive change. See also Section 3690 (manner of service of notice).

Subdivision (b) continues without substantive change subdivision (k) of former Civil Code Section 4700.1.

**§ 3685. Lawyers and other nonparties not allowed**

**Comment.** Section 3685 restates the first two sentences of subdivision (c) of former Civil Code Section 4700.1 and the first two sentences of subdivision (c) of former Civil Code Section 4801.9 without substantive change. See also Section 3693 (election to be represented by counsel in the proceeding).

**§ 3686. Consideration of age increase factor in modification of child support order**

**Comment.** Section 3686 continues former Civil Code Section 4700.3 without substantive change.

**§ 3687. Modification without showing of changed circumstances**

**Comment.** Subdivision (a) of Section 3687 continues the second sentence of subdivision (d) of former Civil Code Section 4700.1 without substantive change. Subdivision (b) continues the second sentence of subdivision (d) of former Civil Code Section 4801.9 without substantive change. Subdivision (c) continues the third sentence of subdivision (d) of former Civil Code Section 4700.1 and the third sentence of subdivision (d) of former Civil Code Section 4801.9 without substantive change.

**§ 3688. Modification based on significant decrease in income**

**Comment.** Section 3688 continues the third paragraph of subdivision (d) of former Civil Code Section 4700.1 and the third paragraph of subdivision (d) of former Civil Code Section 4801.9 without substantive change.

**§ 3689. Tax returns and other documents**

**Comment.** Subdivisions (a) and (b) of Section 3689 continue the fourth paragraph of subdivision (d) of former Civil Code Section 4700.1 and the fourth paragraph of subdivision (d) of former Civil Code Section 4801.9 without substantive change. Subdivision (c) is new and conforms Section 3689 to Section 3665.

**§ 3690. Manner of service of notice**

**Comment.** Section 3690 continues the first two sentences of subdivision (e) of former Civil Code Section 4700.1 and the first two sentences of subdivision (e) of former Civil Code Section 4801.9 without substantive change. See also Section 3553 (giving notice of mailing address and changes in address to other party).

**§ 3691. Notice to district attorney**

**Comment.** Subdivision (a) of Section 3691 continues subdivision (g) of former Civil Code Section 4700.1 without substantive change. Subdivision (b) continues subdivision (f) of former Civil Code Section 4801.9 without substantive change.

**§ 3692. Compliance with federal requirements**

**Comment.** Section 3692 continues subdivision (h) of former Civil Code Section 4700.1 and subdivision (g) of former Civil Code Section 4801.9 without substantive change.



**§ 3693. Election to be represented by counsel**

**Comment.** Section 3693 restates the third sentence of subdivision (c) and subdivision (i) of former Civil Code Section 4700.1 and the third sentence of subdivision (c) and subdivision (h) of former Civil Code Section 4801.9 without substantive change.

**§ 3694. Judicial council forms**

**Comment.** Section 3694 continues subdivision (j) of former Civil Code Section 4700.1 and subdivision (i) of former Civil Code Section 4801.9 without substantive change.

## CHAPTER 7. HEALTH INSURANCE

## Article 1. Health Insurance Coverage for Supported Child

**§ 3750. "Health insurance coverage" defined**

**Comment.** Section 3750 continues paragraph (3) of subdivision (a) of former Civil Code Section 4726 without substantive change.

**§ 3751. Health insurance for supported child**

**Comment.** Section 3751 continues paragraphs (1) and (2) of subdivision (a) of former Civil Code Section 4726 without substantive change. See also Sections 2050-2053 (notice to insurance carriers), 4006 (health insurance coverage as factor in determining child support).

**§ 3752. District attorney designated as assigned payee; information on policy for custodial parent**

**Comment.** Section 3752 continues without substantive change subdivisions (b) and (c) of former Civil Code Section 4726.

**§ 3753. Article applicable in all cases**

**Comment.** Section 3753 continues without substantive change subdivision (d) of former Civil Code Section 4726.

## Article 2. Health Insurance Coverage Assignment

**§ 3760. Definitions**

**Comment.** Subdivision (a) of Section 3760 continues subdivision (m) of former Civil Code Section 4726.1 without substantive change. Subdivision (b) continues subdivision (p) of former Section 4726.1 without substantive change. Subdivision (c) continues the second sentence of paragraph (1) of subdivision (a) of former Section 4726.1 without substantive change.

**§ 3761. Application and order for health insurance coverage assignment; notice of intent to seek order**

**Comment.** Subdivision (a) of Section 3761 continues the first sentence of paragraph (1) of subdivision (a) of former Civil Code Section 4726.1 without substantive change. Subdivision (b) continues subdivision (c) of former Section 4726.1 without substantive change. See also Sections 2050-2053 (notice to insurance carriers), 3510 ("obligor" defined).

**§ 3762. Good cause for not making assignment order**

**Comment.** Section 3762 continues paragraph (2) of subdivision (a) of former Civil Code Section 4726.1 without substantive change. See also Section 3510 ("obligor" defined).

**§ 3763. Time of making and effect of assignment order; modification of order**

**Comment.** Section 3763 continues subdivision (b) of former Civil Code Section 4726.1 without substantive change, except that the phrase "or other person providing health insurance to the obligor" has been added in the second sentence of subdivision (a) of Section 3763. See also Sections 2050-2053 (notice to insurance carriers), 3510 ("obligor" defined).

**§ 3764. Service of assignment order; delivery of copy and information to obligor**

**Comment.** Section 3764 continues subdivision (d) of former Civil Code Section 4726.1 without substantive change. See also Sections 2050-2053 (notice to insurance carriers), 3510 ("obligor" defined).

**§ 3765. Motion to quash assignment**

**Comment.** Section 3765 continues subdivision (e) of former Civil Code Section 4726.1 without substantive change. See also 3510 ("obligor" defined).

**§ 3766. Selection of plans**

**Comment.** Section 3766 continues subdivisions (f) and (j) of former Civil Code Section 4726.1 without substantive change, except that a reference to the other person providing health insurance has been added in the last portion of the second sentence of subdivision (a) and in the first sentence of subdivision (c) of Section 3766. See also Sections 2050-2053 (notice to insurance carriers), 3510 ("obligor" defined).

**§ 3767. Notice concerning commencement of coverage; providing evidence of coverage**

**Comment.** Section 3767 continues subdivisions (h) and (i) of former Civil Code Section 4726.1 without substantive change.

**§ 3768. Liability for failure to comply with assignment**

**Comment.** Section 3768 continues subdivision (g) of former Civil Code Section 4726.1 without substantive change. See also Sections 273 (attorney's fees for enforcement of support order), 2050-2053 (notice to insurance carriers).

**§ 3769. Civil penalty for adverse action against employee**

**Comment.** Section 3769 continues subdivision (l) of former Civil Code Section 4726.1 without substantive change.

**§ 3770. Termination of assignment**

**Comment.** Section 3770 continues subdivision (k) of former Civil Code Section 4726.1 without substantive change. See also Section 3510 ("obligor" defined).

**§ 3771. Employer providing information to district attorney**

**Comment.** Section 3771 continues subdivision (o) of former Civil Code Section 4726.1 without substantive change.

**§ 3772. Judicial Council forms**

**Comment.** Section 3772 continues subdivision (n) of former Civil Code Section 4726.1 without substantive change. See also Section 3510 ("obligor" defined).

**Article 3. Assignment of Reimbursement Rights Under Health Plan****§ 3780. "Health plan" defined**

**Comment.** Section 3780 continues the third paragraph of former Civil Code Section 4358.5 without change.

**§ 3781. Assignment of rights to reimbursement under health plan**

**Comment.** Section 3781 continues the first paragraph of former Civil Code Section 4358.5 without substantive change. See also Sections 2050-2053 (notice to insurance carriers).

**§ 3782. Party covered by health plan to provide information and forms**

**Comment.** Section 3782 continues second paragraph of former Civil Code Section 4358.5 without substantive change. See also Sections 2050-2053 (notice to insurance carriers).

## CHAPTER 8. DEFERRED SALE OF HOME ORDER

**§ 3800. Definitions**

**Comment.** Section 3800 continues subdivision (a) of former Civil Code Section 4700.10 without substantive change.

**§ 3801. Determination of economic feasibility**

**Comment.** Section 3801 continues the first three sentences of subdivision (b) of former Civil Code Section 4700.10 without substantive change.

**§ 3802. Matters to be considered by court in determining whether to grant order**

**Comment.** Subdivision (a) of Section 3802 continues the introductory clause of the fourth sentence of subdivision (b) and the first sentence of subdivision (c) of former Civil Code Section 4700.10 without substantive change. Subdivision (b) continues the remainder of the fourth sentence of subdivision (b) of former Section 4700.10 without substantive change.

**§ 3803. Contents of order**

**Comment.** Section 3803 continues the first portion of the second sentence of subdivision (c) of former Civil Code Section 4700.10 without substantive change.

**§ 3804. Recording order**

**Comment.** Section 3804 continues the last portion of the second sentence of subdivision (c) of former Civil Code Section 4700.10 without substantive change.

**§ 3805. Order as additional child support**

**Comment.** Section 3805 continues the third sentence of subdivision (c) of former Civil Code Section 4700.10 without substantive change. The reference to "subdivision (b) of Section 4055" has been inserted in place of the reference to former Civil Code Section 4728.5. See Section 4055(b). See also Section 273 (attorney's fees for enforcement of support order).

**§ 3806. Order concerning maintenance and capital improvements**

**Comment.** Section 3806 continues subdivision (d) of former Civil Code Section 4700.10 without substantive change.

**§ 3807. Modification or termination or order**

**Comment.** Section 3807 continues a portion of subdivision (e) of former Civil Code Section 4700.10 without substantive change.

**§ 3808. Presumption arising upon remarriage or other change in circumstances**

**Comment.** Section 3808 continues a portion of subdivision (e) of former Civil Code Section 4700.10 without substantive change.

**§ 3809. Reservation of jurisdiction by court**

**Comment.** Section 3809 continues subdivision (f) of former Civil Code Section 4700.10 without substantive change.

**§ 3810. Chapter applies to preexisting orders**

**Comment.** Section 3810 continues subdivision (g) of former Civil Code Section 4700.10 without substantive change.

## PART 2. CHILD SUPPORT

## CHAPTER 1. DUTY OF PARENT TO SUPPORT CHILD

## Article 1. Support of Minor Child

**§ 3900. Duty of parents**

**Comment.** Section 3900 continues subdivision (a) of former Civil Code Section 196 (as amended by 1990 Cal. Stat. ch. 1493, § 1) and the first sentence of former Civil Code Section 196a with the following revision: The provision of former Section 196 requiring consideration of "the respective earnings or earning capacities of the parents" has been omitted from Section 3900 because this language is superseded by Section 4005, which specifies the factors to be taken into account in determining the amount of support, including but not limited to, the earnings or earning capacities of the parents.

Section 3900 supersedes former Section 242 (Uniform Civil Liability for Support Act) to the extent that section related to the duty to support a child.

The duty provided in Section 3900 is subject to the other provisions of this division, including but not limited to Sections 4005-4006 (factors in determining amount of support) and Article 2 (commencing with Section 4050 of Chapter 3 (child support guidelines) and the limitations of this chapter. The duration of the duty to support a minor child may be extended under Section 3901 (duration of duty). As used in Section 3900, "support" includes maintain and educate. Section 150 (support defined). See also Section 3028 (compensation for failure to assume caretaker responsibility or thwarting other parent attempting to exercise custody or visitation rights), 3557 (effect of failure to implement custody or visitation rights). For venue in proceedings to enforce the obligation to support a child, see Code Civ. Proc. § 395.

**§ 3901. Duration of duty**

**Comment.** Section 3901 continues the first and fourth sentences of former Civil Code Section 196.5 and the first and fourth sentences of former Civil Code Section 4704.5 without substantive change. The transitional provisions found in the former sections — that the section does not apply to support agreements made or judgments entered before March 4, 1972 — have been omitted as unnecessary.

The duty may be enforced in the manner described in Section 4000 (civil action against parent to enforce duty of support) or by any other manner provided in by statute. See Part 5 (commencing with Section 4500). See also Section 4001 (child support in pending proceeding). For provisions governing child support provisions of support agreements see Sections 3580-3587.

**§ 3902. Support out of child's property**

**Comment.** Section 3902 continues former Civil Code Section 201 without substantive change, making clear that the provision applies to a minor child. See also Section 150 ("support" includes maintenance and education).

## Article 2. Support of Adult Child

**§ 3910. Duty to maintain incapacitated child**

**Comment.** Subdivision (a) of Section 3910 continues without substantive change former Civil Code Section 242 and subdivision (d) of former Civil Code Section 241 insofar as those provisions imposed a duty to support a son or daughter who is incapacitated from earning a living and without sufficient means. Subdivision (a) of Section 3910 also continues the substance of the first sentence of former Civil Code Section 206 to the extent that section applied to the duty to maintain an adult child. Language taken from subdivision (d) of former Civil Code Section 241 (child "who is incapacitated from earning a living and without sufficient means") has been substituted for the

language of former Section 206 (child "in need who is unable to maintain himself by work"). The "equal responsibility" language used in Section 3910 is new and is drawn from Section 3900.

The duty imposed by Section 3910 is subject to the other provisions of this division. See also Section 3028 (compensation for failure to assume caretaker responsibility or thwarting other parent attempting to exercise custody or visitation rights).

Section 3587 authorizes the court to approve a stipulated agreement by the parties to pay child support for the support of an adult child or for the continuation of child support after the child attains the age of 18.

Subdivision (b) is new. It makes clear that the duty stated in this section does not supersede or limit the duty of support under Sections 3900 and 3901.

#### Article 3. Support of Grandchild

##### § 3930. Support of grandchild

**Comment.** Section 3930 continues former Civil Code Section 208.5 without substantive change.

#### Article 4. Liability to Others Who Provide Support for Child

##### § 3950. Necessaries provided to child

**Comment.** Section 3950 continues former Civil Code Section 207 without substantive change.

##### § 3951. When reimbursement not required

**Comment.** Section 3951 continues former Civil Code Section 208 without substantive change.

##### § 3952. Support of public charge out of estate of parent

**Comment.** Section 3952 continues former Civil Code Section 205 with the following revision: A reference to Division 8 (commencing with Section 13000) of the Probate Code (disposition of estate without administration) has been substituted for the reference in the former section to a civil action against the heirs, devisees, and next of kin of the parent. If there is an administration of the deceased parent's estate, a claim may be submitted to the personal representative administering the estate in the manner provided for the submission of claims.

### CHAPTER 2. COURT-ORDERED CHILD SUPPORT

#### Article 1. General Provisions

##### § 4000. Civil action to enforce parent's duty to support

**Comment.** Section 4000 continues former Civil Code Section 4703 without substantive change. The provision of former Section 4703 that the action be brought "in the superior court" is omitted in view of the general provision to the same effect in Section 200. See also Section 150 ("support" includes maintain and educate). The county may proceed on behalf of the child to enforce the parent's duty of support. See Section 4002. For a provision authorizing compensation for failure to assume caretaker responsibility or thwarting other parent attempting to exercise custody or visitation rights, see Section 3028. See also Sections 273 (attorney's fees for enforcement of support order), 3007 (support order to be included in order awarding custody to parent receiving assistance pursuant to Burton-Miller Act), 3557 (effect of failure to implement custody or visitation rights). For general provisions relating to support, see Part 1 (commencing with Section 3500) and Part 5 (commencing with Section 4500).

Sections 4000 and 4500 supersede the second sentence of former Civil Code Section 196a, the second sentence of the first paragraph of former Civil Code Section 196.5, the portion of the first sentence of former Civil Code Section 248 insofar as it gave a child the right to enforce the duty of support, the second sentence of former Civil Code Section 4000.9, and the second sentence of the first paragraph of former Civil Code Section 4704.5.

**§ 4001. Order for child support**

**Comment.** Section 4001 continues the first sentence of paragraph (1) of subdivision (a) of former Civil Code Section 4700 (as amended by 1990 Cal. Stat. ch. 1493, § 6) with a revision to make clear that the section applies to a child for whom support is authorized under Section 3901. See also Section 150 (when used with reference to a minor child, "support" includes maintain and educate). For general provisions relating to support, see Part 1 (commencing with Section 3500) and Part 5 (commencing with Section 4500). For a provision authorizing compensation for failure to assume caretaker responsibility or thwarting other parent attempting to exercise custody or visitation rights, see Section 3028. See also Sections 273 (attorney's fees for enforcement of support order), 3007 (support order to be included in order awarding custody to parent receiving assistance pursuant to Burton-Miller Act), 3557 (effect of failure to implement custody or visitation rights), 3600-3603 (support during pendency of proceeding), 3620-3634 (expedited child support order), 3650-3694 (modification or termination of support order), 3750-3782 (health insurance), 3800-3810 (deferred sale of home order), 4550-4573 (deposit of money to secure future child support payments), 4600-4641 (deposit of assets to secure future child support payments).

**§ 4002. Enforcement by county on behalf of child**

**Comment.** Section 4002 continues former Civil Code Section 248 without substantive change to the extent that the former section related to enforcement by the county of child support. For general provisions relating to support, see Part 1 (commencing with Section 3500) and Part 5 (commencing with Section 4500). Compare Section 4303 (enforcement of spouse's right to support). See also Sections 273 (attorney's fees for enforcement of support order), 3007 (support order to be included in order awarding custody to parent receiving assistance pursuant to Burton-Miller Act), 3557 (effect of failure to implement custody or visitation rights).

**§ 4003. Preference for trial on issue of support**

**Comment.** Section 4003 continues former Civil Code Section 4707 without substantive change. For general provisions relating to support, see Part 1 (commencing with Section 3500) and Part 5 (commencing with Section 4500).

**§ 4004. Child receiving public assistance**

**Comment.** Section 4004 continues former Civil Code Section 4700.5 without substantive change. See also Sections 3007 (support order to be included in order awarding custody to parent receiving assistance pursuant to Burton-Miller Act).

**§ 4005. Factors in determining amount of child support**

**Comment.** Subdivision (a) of Section 4005 continues former Civil Code Section 246 without substantive change to the extent it related to child support. Paragraph (1) of subdivision (a) also continues the provision of former Civil Code Section 196 (as amended by 1990 Cal. Stat. ch. 1493, § 1) requiring the court to consider "the respective earnings or earning capacities of the parents." Subdivision (b) generalizes the second sentence of paragraph (1) of subdivision (a) of former Civil Code Section 4700 (which applied to support of a minor child) to apply to all cases of child support, including support of a child described in Section 3910 (adult child who is incapacitated from earning a living and without sufficient means). See also Sections 273 (attorney's fees for enforcement of support order), 3007 (support order to be included in order awarding custody to parent receiving assistance pursuant to Burton-Miller Act), 3028 (compensation for failure to assume caretaker responsibility or thwarting other parent attempting to exercise custody or visitation rights), 3557 (effect of failure to implement custody or visitation rights), 3805 (deferred sale of home order as child support), 4006 (medical insurance as factor in child support). Compare Section 4320 (circumstances to be considered in ordering spousal support).

**§ 4006. Health insurance coverage as factor**

**Comment.** Section 4006 continues former Civil Code Section 4706 without substantive change except that Section 4006 is extended to apply to any proceeding "under this code" and Section 4006 applies in "a proceeding for child support" whereas the former Civil Code section applied in an "action for support" brought under former Chapter 1 (commencing with Section 4700) of Title 5 of Part 5 of the Civil Code. See also Sections 3750-3782 (medical insurance coverage or assignment for supported child).

**§ 4007. Support for contingent period of time**

**Comment.** Section 4007 continues subdivision (c) of former Civil Code Section 4700 (as amended by 1990 Cal. Stat. ch. 1493, § 6) without substantive change. For a comparable provision, see Section 4334 (spousal support).

**§ 4008. Property available for child support**

**Comment.** Section 4008 continues former Civil Code Section 4807 without substantive change. Compare Section 4338 (spousal support).

**§ 4009. Retroactivity of order**

**Comment.** Section 4009 continues the sixth sentence of paragraph (1) of subdivision (a) of former Civil Code Section 4700 (as amended by 1990 Cal. Stat. ch. 1493, § 6) without substantive change to the extent that sentence related to the making of the order for child support. See also Article 3 (commencing with Section 4100) (recovery for cost of support provided before filing proceeding), Section 3653 (retroactivity of order modifying or terminating child support order). Compare Section 4333 (spousal support order).

**§ 4010. Notice of modification procedures**

**Comment.** Section 4010 continues without substantive change subdivision (f) of former Civil Code Section 4700.1. See also Sections 3650-3694 (modification or termination of support order).

**§ 4011. Priority of child support payments**

**Comment.** Section 4011 continues the fourth sentence of paragraph (1) of subdivision (a) of former Civil Code Section 4700 (as amended by 1990 Cal. Stat. ch. 1493, § 6) without substantive change. See also Section 4501 (enforcement of family support order).

**§ 4012. Security for payment**

**Comment.** Section 4012 continues without substantive change the third sentence of paragraph (1) of subdivision (a) of former Civil Code Section 4700 (as amended by 1990 Cal. Stat. ch. 1493, § 6). See also Sections 273 (attorney's fees for enforcement of support order), 4550-4573 (deposit of money to secure future child support payments), 4600-4641 (deposit of assets to secure future child support payments). Compare Section 4339 (spousal support).

**§ 4013. Obligation discharged in bankruptcy**

**Comment.** Section 4013 continues without substantive change subdivision (d) of former Civil Code Section 4700 (as amended by 1990 Cal. Stat. ch. 1493, § 6). See also Section 150 ("support" includes maintain and educate). Compare Section 3592 (agreement for property settlement or support of spouse discharged in bankruptcy).

## Article 2. Child Support Guidelines

**§ 4050. Intent to comply with federal regulations for child support guidelines: statewide guidelines adopted effective July 1, 1992**

**Comment.** Section 4050 continues paragraph (1) of subdivision (a) of Civil Code Section 4720.1 (as added by 1991 Cal. Stat. ch. 110, § 12) without substantive change.

**§ 4051. Child support according to parent's circumstances and station in life**

**Comment.** Section 4051 continues the second and third sentences of paragraph (2) of subdivision (a) of Civil Code Section 4720.1 (as added by 1991 Cal. Stat. ch. 110, § 12) without substantive change.

**§ 4052. Intent that courts depart from guidelines only in exceptional circumstances**

**Comment.** Section 4052 continues the first sentence of paragraph (2) of subdivision (a) of Civil Code Section 4720.1 (as added by 1991 Cal. Stat. ch. 110, § 12) without substantive change.

**§ 4053. Formula for statewide uniform guideline for determining child support**

**Comment.** Section 4053 continues subdivisions (a) and (b) of Civil Code Section 4720.2 (added by 1991 Cal. Stat. ch. 110, § 13) (as amended by 1991 Cal. Stat. ch. 542, § 4.5) without substantive change.

**§ 4054. Presumption that amount established by formula is correct amount**

**Comment.** Section 4054 continues subdivision (d) of Civil Code Section 4720.2 (added by 1991 Cal. Stat. ch. 110, § 13) (as amended by 1991 Cal. Stat. ch. 542, § 4.5) without substantive change.

**§ 4055. Factors that may rebut presumption**

**Comment.** Section 4055 continues subdivision (e) of Civil Code Section 4720.2 (added by 1991 Cal. Stat. ch. 110, § 13) (as amended by 1991 Cal. Stat. ch. 542, § 4.5) without substantive change.

**§ 4056. Court to state on record net monthly disposable income**

**Comment.** Section 4056 continues subdivision (c) of Civil Code Section 4720.2 (added by 1991 Cal. Stat. ch. 110, § 13) (as amended by 1991 Cal. Stat. ch. 542, § 4.5) without substantive change. See also Section 4060 (determining net monthly disposable income).

**§ 4057. Justification by court for departing from guidelines; findings required by federal laws**

**Comment.** Section 4057 continues subdivision (f) of Civil Code Section 4720.2 (added by 1991 Cal. Stat. ch. 110, § 13) (as amended by 1991 Cal. Stat. ch. 542, § 4.5) without substantive change.

**§ 4058. Computation of annual gross income**

**Comment.** Section 4058 continues paragraphs (1), (2), and (3) of subdivision (g) of Civil Code Section 4720.2 (added by 1991 Cal. Stat. ch. 110 § 13) (as amended by 1991 Cal. Stat. ch. 542, § 4.5) without substantive change.

**§ 4059. Computation of annual net disposable income**

**Comment.** Section 4059 continues paragraph (4) of subdivision (g) of Civil Code Section 4720.2 (added by 1991 Cal. Stat. ch. 110, § 13) (as amended by 1991 Cal. Stat. ch. 542, § 4.5) without substantive change.

**§ 4060. Determining monthly net disposable income**

**Comment.** Section 4060 continues paragraph (5) of subdivision (g) of Civil Code Section 4720.2 (added by 1991 Cal. Stat. ch. 110, § 13) (as amended by 1991 Cal. Stat. ch. 542, § 4.5) without substantive change.

**§ 4061. Adjustment of child support award where income of parent seasonal or fluctuating**

**Comment.** Section 4061 continues subdivision (j) of Civil Code Section 4720.2 (added by 1991 Cal. Stat. ch. 110, § 13) (as amended by 1991 Cal. Stat. ch. 542, § 4.5) without substantive change.

**§ 4062. Amount of support to be not less than minimum amount mandated under repealed Agnos Child Support Standards Act of 1984**

**Comment.** Section 4062 continues subdivision (h) of Civil Code Section 4720.2 (added by 1991 Cal. Stat. ch. 110, § 13) (as amended by 1991 Cal. Stat. ch. 542, § 4.5) without substantive change.



**§ 4063. Stipulated agreement for child support award**

**Comment.** Section 4063 continues subdivisions (k) and (l) of Civil Code Section 4720.2 (added by 1991 Cal. Stat. ch. 110, § 13) (as amended by 1991 Cal. Stat. ch. 542, § 4.5) without substantive change.

**§ 4064. Amounts considered as support; reduction of net income by amount of child support paid; additions to amount of child support calculated under formula**

**Comment.** Section 4064 continues subdivision (i) of Civil Code Section 4720.2 (added by 1991 Cal. Stat. ch. 110, § 13) (as amended by 1991 Cal. Stat. ch. 542, § 4.5) without substantive change.

**§ 4065. Order or stipulation designating support as "family support"**

**Comment.** Section 4065 continues subdivision (m) of Civil Code Section 4720.2 (added by 1991 Cal. Stat. ch. 110, § 13) (as amended by 1991 Cal. Stat. ch. 542, § 4.5) without substantive change.

**§ 4066. Judicial Council study and reports**

**Comment.** The first two sentences of subdivision (a) and subdivisions (b) to (e), inclusive, of Section 4066 continue subdivisions (b), (c), (d), and (e) of Civil Code Section 4720.1 (as added by 1991 Cal. Stat. ch. 110, § 12) without substantive change. See also 1991 Cal. Stat. ch. 542, § 8 ("study required by subdivision (b) of Section 4720.1 of the Civil Code shall not be due until December 31, 1992.") The third sentence of subdivision (a) of Section 4066 continues paragraph (3) of subdivision (a) of Civil Code Section 4720.1 (as added by 1991 Cal. Stat. ch. 110, § 12) without substantive change.

**§ 4067. Sections 4050, 4051, 4052, and 4066 remain in effect only until January 1, 1994, unless later enacted statute otherwise provides**

**Comment.** Section 4067 continues subdivision (f) of Civil Code Section 4720.1 (as added by 1991 Cal. Stat. ch. 110, § 12). A similar sunset provision was found in subdivision (o) of Civil Code Section 4720.2 (as added by 1991 Cal. Stat. ch. 110, § 13) but that provision was deleted from Section 4720.2 by an amendment made by 1991 Cal. Stat. ch. 542, § 4.5.

**§ 4068. Continuing review of guidelines by Legislature**

**Comment.** Section 4068 continues subdivision (n) of Civil Code Section 4720.2 (added by 1991 Cal. Stat. ch. 110, § 13; amended by 1991 Cal. Stat. ch. 542, § 4.5) without substantive change. See also Section 4066 (Judicial Council study and reports).

**Article 3. Recovery for Cost of Support Provided Before Filing Proceeding****§ 4100. Article applies only to child born after December 31, 1988**

**Comment.** Section 4100 continues without substantive change the last sentence of subdivision (b) and the last sentence of subdivision (c) of former Civil Code Section 196 (as amended by 1990 Cal. Stat. ch. 1493, § 1), the last sentence of paragraph (2) and the fifth sentence of paragraph (3) of subdivision (a) of former Civil Code Section 4700 (as amended by 1990 Cal. Stat. ch. 1493, § 6), and the last sentence of paragraph (2) and the fifth sentence of paragraph (3) of subdivision (c) of former Civil Code Section 7010 (as amended by 1990 Cal. Stat. ch. 1493, § 29). For a provision comparable to this article, see Section 7637 (Uniform Parentage Act).

The provisions of this article, which are drawn from former Civil Code Sections 196, 4700, and 7010, are subject to a "sunset provision" that has not been continued. The "sunset provision" provided in effect that the provision set out in this article remain operative only until January 1, 1993, and as of that date are repealed, unless a later enacted statute, which is enacted before January 1, 1993, deletes or extends the January 1, 1993, expiration date.

**§ 4101. Order for cost of support before filing proceeding**

**Comment.** Subdivision (a) of Section 4101 continues without substantive change subdivision (b) of former Civil Code Section 196 (as amended by 1990 Cal. Stat. ch. 1493, § 1), paragraph (2) of subdivision (a) of former Civil Code Section 4700 (as amended by 1990 Cal. Stat. ch. 1493, § 6), and paragraph (2) of subdivision (c) of former Civil Code Section 7010, except that the provision of the former sections limiting them to cases where the child is born on or after January 1, 1989, is continued in Section 4100.

Subdivision (b) continues without substantive change the second sentence of subdivision (c) of former Civil Code Section 196 (as amended by 1990 Cal. Stat. ch. 1493, § 1), the second sentence of paragraph (3) of subdivision (a) of former Civil Code Section 4700 (as amended by 1990 Cal. Stat. ch. 1493, § 6), and the second sentence of paragraph (3) of subdivision (c) of former Civil Code Section 7010.

The word "proceeding" is substituted in Section 4101 for "action" which is used in the former Civil Code provisions. This is not a substantive change.

See also Sections 155 ("support order" means a judgment or order of support in favor of an obligee, whether temporary or final, or subject to modification, termination, or remission, regardless of the kind of action or proceeding in which it is entered), 3007 (support order to be included in order awarding custody to parent receiving assistance pursuant to Burton-Miller Act), 3028 (compensation for failure to assume caretaker responsibility or thwarting other parent attempting to exercise custody or visitation rights), 3505 ("obligee" defined). For a similar provision, see Section 7637(b) (Uniform Parentage Act).

See also the Comment to Section 4100.

**§ 4102. Factors court to consider in determining amount and period of support**

**Comment.** Section 4102 is the same as subdivision (d) of former Civil Code Section 7010 and continues the substantive effect of subdivision (d) of former Civil Code Section 196 and the last sentence of paragraph (3) of subdivision (a) of former Civil Code Section 4700. Section 4102 is similar to subdivision (e) of Section 15 of the Uniform Parentage Act (1973). See also the Comment to Section 4100.

**§ 4103. Use of guidelines and law in effect for each period for which support is sought**

**Comment.** Section 4103 continues without substantive change the fourth sentence of subdivision (c) of former Civil Code Section 196 (as amended by 1990 Cal. Stat. ch. 1493, § 1), the fourth sentence of paragraph (3) of subdivision (a) of former Civil Code Section 4700 (as amended by 1990 Cal. Stat. ch. 1493, § 6), and the fourth sentence of paragraph (3) of subdivision (c) of former Civil Code Section 7010. The words "under this article" are added after "is being requested" in Section 4103 to make clear that the section applies only where support is being requested under this article. This is not a substantive change. See also the Comment to Section 4100.

**§ 4104. Prerequisite in certain cases that information be given to father**

**Comment.** Section 4104 continues without substantive change the first sentence of subdivision (c) of former Civil Code Section 196 (as amended by 1990 Cal. Stat. ch. 1493, § 1), the first sentence of paragraph (3) of subdivision (a) of former Civil Code Section 4700 (as amended by 1990 Cal. Stat. ch. 1493, § 6), and the first sentence of paragraph (3) of subdivision (c) of former Civil Code Section 7010. See also the Comment to Section 4100.

**§ 4105. Support ordered to be in amount that does not reduce parent's ability to provide support for other child**

**Comment.** Section 4105 continues without substantive change the third sentence of subdivision (c) of former Civil Code Section 196 (as amended by 1990 Cal. Stat. ch. 1493, § 1), the third sentence of paragraph (3) of subdivision (a) of former Civil Code Section 4700 (as amended by 1990 Cal. Stat.

ch. 1493, § 6), and the third sentence of paragraph (3) of subdivision (c) of former Civil Code Section 7010. See also the Comment to Section 4100.

**Article 4. Payment to Court-Designated County Officer; Enforcement by District Attorney**

**§ 4200. Child support payable to parent receiving welfare**

**Comment.** Section 4200 continues subdivision (a) of former Civil Code Section 4702 without substantive change. See also Sections 3555 (forwarding of support payments paid through county officer), 4550-4573 (deposit of money to secure future child support payments), 4600-4641 (deposit of assets to secure future child support payments). For a comparable procedure for spousal support payments, see Sections 4350-4352.

**§ 4201. Child support payable to person having custody of minor child**

**Comment.** Section 4201 continues subdivision (b) of former Civil Code Section 4702 without substantive change except that the words "of the marriage" have been omitted following "minor child" in the introductory clause of Section 4201. This deletion makes Section 4201 clearly applicable to a support order under the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12) in a case where the parents are not married. See Section 7637. See also Sections 3555 (forwarding of support payments paid through county officer), 4550-4573 (deposit of money to secure future child support payments), 4600-4641 (deposit of assets to secure future child support payments).

**§ 4202. Custodial parent resides in one county and supporting parent in another**

**Comment.** Section 4202 continues subdivision (c) of former Civil Code Section 4702 without substantive change. See also Section 3555 (forwarding of support payments paid through county officer).

**§ 4203. County responsible for expenses and fees**

**Comment.** Section 4203 continues subdivision (d) of former Civil Code Section 4702 without substantive change. See also Sections 273 (attorney's fees for enforcement of support order),

**PART 3. SPOUSAL SUPPORT**

**CHAPTER 1. DUTY TO SUPPORT SPOUSE**

**§ 4300. Duty to support spouse**

**Comment.** Section 4300 is drawn from former Civil Code Section 242. See also Civil Code Section 5100 (husband and wife contract toward each other obligations of mutual respect, fidelity, and support). The duty stated in this section is subject to a number of limitations, including Sections 4301 (use of separate property for support) and 4302 (spouses living separate by agreement). For the factors that enter into the amount of court-ordered support, see Sections 4320-4323.

**§ 4301. Use of separate property for support while living together**

**Comment.** Section 4301 continues former Civil Code Section 5132 without substantive change. The second sentence of the former section is omitted in view of the definitions provided by Sections 125 and 3515. See Sections 125 ("quasi-community property" defined), 3515 ("separate property" defined). For background on former Civil Code Section 5132, see Recommendation Relating to Liability of Marital Property for Debts, 17 Cal. L. Revision Comm'n Report: 1 (1984).

Section 4301 is consistent with Section 914(a)(1) and (b), but Section 914(a)(1) and (b) does not require exhaustion of community and quasi-community property before separate property of a nondebtor spouse can be reached by a third-party creditor.

**§ 4302. Spouse living separate by agreement**

**Comment.** Section 4302 continues former Civil Code Section 5131 without substantive change. See also Section 3580 (provisions for spousal and child support in separation agreement).

**§ 4303. Civil action to enforce spouse's right to support**

**Comment.** Section 4303 continues former Civil Code Section 248 without substantive change insofar as it related to enforcement of spousal support. See also Sections 3505 ("obligee" defined), 3510 ("obligor" defined). Compare Section 4002 (enforcement by county of child support obligation).

**CHAPTER 2. FACTORS TO BE CONSIDERED IN ORDERING SUPPORT****§ 4320. Circumstances to be considered in ordering spousal support**

**Comment.** Section 4320 continues paragraphs (1)-(10) subdivision (a) of former Civil Code Section 4801 (as amended by 1991 Cal. Stat. ch. 1207, § 1) without substantive change. Section 4320 supersedes former Civil Code Section 246 to the extent it related to support of a spouse. It should be noted that the factors enumerated in this section apply in any court order under this part, including Section 4300 (duty to support spouse) and Section 5540 (modification or termination of order) as well as Section 4330 (court ordered support). Concerning the effect of community contributions and reimbursements for education or training on spousal support, see Section 2641(d). See also Sections 273 (attorney's fees for enforcement of support order), 3591 (support order where agreement for settlement of property or for support of spouse discharged in bankruptcy), 4360 (spousal support may include an amount to purchase annuity, life insurance, or trust for support of supported spouse). Compare Section 4005 (child support).

**§ 4321. Withholding allowance from separate property of other party**

**Comment.** Section 4321 continues the first sentence of former Civil Code Section 4806 without substantive change. See also Section 3515 ("separate property" defined).

**§ 4322. No support order where there are no children and other party has sufficient separate estate**

**Comment.** Section 4322 continues the second sentence of former Civil Code Section 4806 without substantive change. The phrase "In any original or modification proceeding" has been omitted as unnecessary.

**§ 4323. Effect of cohabitation on support**

**Comment.** Section 4323 continues former Civil Code Section 4801.5 without substantive change.

**CHAPTER 3. SPOUSAL SUPPORT UPON DISSOLUTION OR LEGAL SEPARATION****§ 4330. Order for spousal support in dissolution or legal separation proceeding**

**Comment.** Section 4330 continues the first sentence of subdivision (a) of former Civil Code Section 4801 (as amended by 1991 Cal. Stat. ch. 1207, § 1) without substantive change. For the factors that enter into the determination of whether to order spousal support and the amount of court-ordered support, see Sections 4320-4323. See also Section 273 (attorney's fees for enforcement of support order).

**§ 4331. Examination by vocational training consultant**

**Comment.** Subdivisions (a) to (c) of Section 4331 continue subdivision (e) of former Civil Code Section 4801 (as amended by 1991 Cal. Stat. ch. 1207, § 1) without substantive change. Subdivision (d) continues the first paragraph of subdivision (f) of former Civil Code Section 4801 (as amended by 1991 Cal. Stat. ch. 1207, § 1) without substantive change. Subdivision (e) continues the second paragraph of subdivision (f) of former Civil Code Section 4801 (as amended by 1991 Cal. Stat. ch.

1207, § 1) without substantive change. Subdivision (f) continues subdivision (g) of former Civil Code Section 4801 (as amended by 1991 Cal. Stat. ch. 1207, § 1) without substantive change. Language is added to make clear that the section applies to a proceeding for dissolution of marriage or legal separation.

**§ 4332. Court findings concerning circumstances**

**Comment.** Section 4332 continues the first sentence of the last paragraph of subdivision (a) of former Civil Code Section 4801 (as amended by 1991 Cal. Stat. ch. 1207, § 1) without substantive change. Language is added to make clear that the section applies to a proceeding for dissolution of marriage or legal separation. For the factors that enter into the amount of court-ordered support, see Sections 4320-4323.

**§ 4333. Retroactivity of order**

**Comment.** Section 4333 continues the fourth sentence of the last paragraph of subdivision (a) of former Civil Code Section 4801 (as amended by 1991 Cal. Stat. ch. 1207, § 1) without substantive change. Language is added to make clear that the section applies to a proceeding for dissolution of marriage or legal separation.

**§ 4334. Support for contingent period of time**

**Comment.** Section 4334 continues subdivision (c) of former Civil Code Section 4801 (as amended by 1991 Cal. Stat. ch. 1207, § 1) without substantive change. Compare 4007 (child support).

**§ 4335. Support for fixed period of time**

**Comment.** Section 4335 continues the first sentence of the first paragraph of subdivision (d) of former Civil Code Section 4801 (as amended by 1991 Cal. Stat. ch. 1207, § 1) without substantive change. The reference to Section 4336 has been added.

**§ 4336. Retention of jurisdiction**

**Comment.** Section 4336 continues the second sentence of the first paragraph, and the second and third paragraphs, of subdivision (d) of former Civil Code Section 4801 without substantive change. Language is added to make clear that the section applies to a proceeding for dissolution of marriage or legal separation.

**§ 4337. Effect of death or remarriage**

**Comment.** Section 4337 continues subdivision (b) of former Civil Code Section 4801 (as amended by 1991 Cal. Stat. ch. 1207, § 1) without substantive change. See also Sections 4334 (support for contingent period of time), 4335 (support for fixed period to time).

**§ 4338. Order of resort to property for payment of spousal support**

**Comment.** Section 4338 continues former Civil Code Section 4805 with the addition of language to make clear that the section is limited to spousal support. See also Section 3515 (for purposes of this section, "separate property" does not include quasi-community property). Compare Section 4008 (property available for child support).

**§ 4339. Security for payment**

**Comment.** Section 4339 continues the second sentence of the last paragraph of subdivision (a) of former Civil Code Section 4801 (as amended by 1991 Cal. Stat. ch. 1207, § 1) without substantive change. Compare Section 4012 (security for payment of child support). See also 4550-4573 (deposit of money to secure future child support payments). Sections 4600-4641 (deposit of assets to secure future child support payments).

CHAPTER 4. PAYMENT TO COURT-DESIGNATED  
OFFICER; ENFORCEMENT BY DISTRICT ATTORNEY

§ 4350. Payment of support payments to designated county officer

**Comment.** Section 4350 continues subdivision (a) of former Civil Code Section 4801.7 without substantive change. For a comparable procedure for child support payments, see Sections 4200-4203. See also Section 3555 (forwarding of support payments paid through county officer).

§ 4351. Referral of enforcement to district attorney

**Comment.** Section 4351 continues subdivisions (b) and (c) of former Civil Code Section 4801.7 without substantive change. See also Sections 273 (attorney's fees for enforcement of support order),

§ 4352. County responsible for expenses and fees

**Comment.** Section 4352 continues subdivision (d) of former Civil Code Section 4801.7 without substantive change. See also Sections 273 (attorney's fees for enforcement of support order),

CHAPTER 5. PROVISION FOR SUPPORT AFTER DEATH OF SUPPORTING PARTY

§ 4360. Annuity, life insurance, or trust for support

**Comment.** Section 4360 continues former Civil Code Section 4801.4 without substantive change. For background on former Civil Code Section 4801.4, see *Recommendation Relating to Provision for Support if Support Obligor Dies*, 18 Cal. L. Revision Comm'n Reports 119 (1986).

Section 4360 gives the court authority to order the purchase of an annuity for the supported spouse or to order that the support obligor establish a trust to provide for the support of the supported spouse. This authority is given in recognition that in some circumstances the amount of insurance in force, if any, on the life of the support obligor may be insufficient and the support obligor may no longer be insurable or insurance can be obtained only at a prohibitive cost.

If insurance is already in force on the life of the support obligor, Section 4360 authorizes the court to order that the support obligor maintain some or all of the insurance in force and name the supported spouse as the beneficiary of the insurance. And, if the support obligor is insurable, the section authorizes the court to order that the support obligor obtain and maintain insurance and name the supported spouse as beneficiary. The support obligor can change the beneficiary on the insurance if the supported spouse dies before the support obligor. Instead of ordering the support obligor to maintain insurance and name the supported spouse as beneficiary, the court may order the support obligor to purchase an annuity for the supported spouse to provide support in the event that the support obligor dies before the supported spouse. In some cases, this may be less expensive than insurance. In other cases, the establishment of a trust to provide for the support of the supported spouse during that spouse's lifetime may be the best solution. If a trust is used, after the death of the supported spouse, the income or assets of the trust, or both, could be paid to the person designated by the support obligor.

Section 4360 does not change the rule that the support order terminates when the support obligor dies. See Section 4337. The section permits the court where it is just and reasonable to do so in view of the circumstances of the particular case to order (as a part of the support) insurance, an annuity, or establishment of a trust, where necessary so that the supported spouse will not be left without means for support if the support obligor dies. This section supplements Section 4320 which requires the court to consider a number of factors in determining the amount and duration of support.

## PART 4. SUPPORT OF PARENTS

## CHAPTER 1. GENERAL PROVISIONS

**§ 4400. Duty to support parent in need**

**Comment.** Section 4400 is drawn from portions of former Civil Code Sections 206 and 242. It continues the substance of the first sentence of former Civil Code Section 206 insofar as that sentence imposed a duty upon a child to support his or her parent. The introductory clause is added to Section 4400 to recognize exceptions such as that found in Welfare and Institutions Code Section 12350 ("No relative shall be held legally liable to support or to contribute to the support of any applicant for or recipient of aid under this chapter [state supplementary program for aged, blind, and disabled]").

The last sentence of former Civil Code Section 206 (which defined a parent who receives aid to the aged as one in need) has been omitted as obsolete in view of the repeal of the aid provisions based on the ability of an adult child to support the parent in this situation. See Welfare and Institutions Code Section 12350.

The duty of support stated in Section 4400 is subject to Chapter 2 (commencing with Section 4410) (relief from duty to support parent on ground of abandonment).

**§ 4401. Promise to pay for previous support**

**Comment.** Section 4401 continues the substance of the second sentence of former Civil Code Section 206.

**§ 4402. Duty cumulative**

**Comment.** Section 4402 continues the substance of former Civil Code Section 251.

**§ 4403. Civil action to enforce parent's right to support**

**Comment.** Section 4403 continues former Civil Code Section 248 without substantive change insofar as Section 248 related to enforcement of the duty of a child to support a parent. However, subdivision (b) makes clear that the right of the county to bring an action or to obtain reimbursement is subject to limitations applicable under various aid programs. See, e.g., Welf. & Inst. Code § 12350 (no relative liable under The Burton-Moscone-Bagley Citizens' Security Act for the Aged, Blind and Disabled Californians).

**§ 4404. Determination of amount of support**

**Comment.** Section 4404 is drawn from former Civil Code Section 246.

**§ 4405. Modification or termination of order**

**Comment.** Section 4405 continues the substance of former Civil Code Section 247 insofar as it applied to an order for support of a parent.

## CHAPTER 2. RELIEF FROM DUTY TO SUPPORT PARENT WHO ABANDONED CHILD

**§ 4410. Proceeding to obtain relief from obligation to support parent**

**Comment.** Section 4410 continues a portion of the first sentence of former Civil Code Section 206.5 without substantive change except that the second sentence has been added to make clear the correct venue when the parent is not a California resident. See also Section 212 (verification of pleadings).

**§ 4411. Requirements for order granting relief**

**Comment.** Section 4411 restates a portion of the first sentence of former Civil Code Section 206.5.

**§ 4412. Citation and notice of hearing**

**Comment.** Section 4412 continues the second and third sentences of former Civil Code Section 206.5 without substantive change.

**§ 4413. Notice to district attorney or county counsel**

**Comment.** Section 4413 restates former Civil Code Section 206.6 without substantive change.

**§ 4414. Hearing and order**

**Comment.** Section 4414 continues the fourth and fifth sentences of former Section 206.5 without substantive change.

## PART 5. ENFORCEMENT OF SUPPORT ORDERS

### CHAPTER 1. GENERAL PROVISIONS

**§ 4500. Support orders enforceable under this code**

**Comment.** Section 4500 continues former Civil Code Section 4385 without substantive change except that the references in Section 4500 are to "this code," rather than to only a portion of the code. The reference to "family" support is added to reflect the rule stated in Section 4501. See also Sections 155 ("support order" defined), 273 (attorney's fees and costs for enforcement of support order), 4011 (priority of child support payments).

Section 4500 makes clear that a support order is enforceable under this code if it is made, entered, or enforceable in this state. The order need not be one that is made or entered pursuant to this division or this code. Accordingly, for example, a foreign support judgment that has been registered in this state under provisions of the Code of Civil Procedure is enforceable under this code. See Code Civ. Proc. § 1699 (registered foreign support order treated in the same manner as a support order issued by a court of this state). For background on former Civil Code Section 4385, see 16 Cal. L. Revision Comm'n Reports 2143 (1982).

Sections 4500 (together with Section 4000) supersede the second sentence of former Civil Code Section 196a, the second sentence of the first paragraph of former Civil Code Section 196.5, the portion of the first sentence of former Civil Code Section 248 insofar as it gave an obligee the right to enforce the duty of support, the second sentence of former Civil Code Section 4700.9, and the second sentence of the first paragraph of former Civil Code Section 4704.5.

**§ 4501. Enforcement of family support order**

**Comment.** Section 4501 continues the second and third sentences of subdivision (d) of former Civil Code Section 4811 without substantive change. See also Sections 92 ("family support" defined), 273 (attorney's fees and costs for enforcement of support order), 4011 (priority of child support payments).

**§ 4502. Renewal of judgment for support**

**Comment.** Section 4502 continues former Civil Code Section 4384.5 without substantive change. The reference to "family" support is added to reflect the rule stated in Section 4501. As to the lack of diligence in seeking enforcement of a support order, see Section 291.

The general provisions on renewal of judgments (Code Civ. Proc. §§ 683.110-683.220) do not apply to judgments made, entered, or enforceable under the Family Code. See Code Civ. Proc. § 683.310.

**§ 4503. Limitation period for recovery of arrearages in child support not affected by child attaining age of 18**

**Comment.** Section 4503 continues former Civil Code Section 4708 without substantive change. See also Section 4011 (priority of child support payments).

**§ 4504. Crediting payments made pursuant to Social Security or Railroad Retirement Acts against amount of court ordered support**

**Comment.** Section 4504 continues former Civil Code Section 4705 without substantive change.



**§ 4505. Submitting list of places applied for employment where default in support due to unemployment**

**Comment.** Section 4505 continues former Civil Code Section 4709 without substantive change except that the section has been expanded to include all child or family support orders. Formerly, the section applied only to orders issued under Title 5 (commencing with Section 4700) of former Part 5 of the Civil Code.

**§ 4506. Abstract of judgment**

**Comment.** Section 4506 continues subdivisions (b) and (c) of Code of Civil Procedure Section 674 without substantive change. See also Code of Civil Procedure 674(b) (Amendment to Abstract of Judgment).

**CHAPTER 1.5. DEPOSIT OF MONEY TO SECURE FUTURE CHILD SUPPORT PAYMENTS**

**Article 1. General Provisions**

**§ 4550. "Child support obligee" defined**

**Comment.** Section 4550 continues the first two sentences of subdivision (f) of former Civil Code Section 4710 (added by 1991 Cal. Stat. ch. 1141, § 3) without substantive change. The phrase "other person" has been substituted for "conservatee." "Conservatee" is an obvious typographical error. See also Section 4573 (payment by district attorney to custodial parent or other person having care or control of child where support is paid through district attorney for child not receiving public assistance).

**§ 4551. Application of chapter**

**Comment.** Section 4551 continues subdivision (g) of former Civil Code Section 4710 (added by 1991 Cal. Stat. ch. 1141, § 3) without substantive change. The word "filed" has been substituted for "entered into" in subdivision (b).

**§ 4552. Judicial Council rules and forms**

**Comment.** Section 4552 continues 1991 Cal. Stat. ch. 1141, § 4 without change.

**§ 4553. Compliance with requirements of federal law**

**Comment.** Section 4553 continues 1991 Cal. Stat. ch. 1141, § 5 without change.

**§ 4554. Chapter applies notwithstanding any other law**

**Comment.** Section 4554 continues the introductory clause of former Civil Code Section 4710 (added by 1991 Cal. Stat. ch. 1141, § 3) without substantive change. See also Sections 4552, 4553 (compliance with requirements of federal law).

**Article 2. Order for Deposit of Money**

**§ 4560. Order for child support security deposit**

**Comment.** Subdivision (a) of Section 4560 continues the first two sentences of subdivision (a) of former Civil Code Section 4710 (added by 1991 Cal. Stat. ch. 1141, § 3) without substantive change. Subdivision (b) continues subdivision (d) of former Civil Code Section 4710 (added by 1991 Cal. Stat. ch. 1141, § 3) without substantive change. See also Sections 4551 (application of chapter), 4565 (grounds for application to reduce or eliminate deposit). For provisions relating to the deposit of assets to secure future support, see Sections 4600-4641.

**§ 4561. Deposit in court controlled account**

**Comment.** Section 4561 continues the third and fifth sentences of subdivision (a) of former Civil Code Section 4710 (added by 1991 Cal. Stat. ch. 1141, § 3) without substantive change.

**§ 4562. Child support obligor to provide evidence deposit made**

**Comment.** Section 4562 continues the fourth sentence of subdivision (a) of former Civil Code Section 4710 (added by 1991 Cal. Stat. ch. 1141, § 3) without substantive change.

**§ 4563. Dissolution of account and disposition of remaining funds**

**Comment.** Section 4563 continues subdivision (c) of former Civil Code Section 4710 (added by 1991 Cal. Stat. ch. 1141, § 3) without substantive change.

**Article 3. Application to Reduce or Eliminate Deposit****§ 4565. Application by child support obligor**

**Comment.** Section 4565 continues the first two sentences of subdivision (e) of former Civil Code Section 4710 (added by 1991 Cal. Stat. ch. 1141, § 3) without substantive change. See also Sections 4600-4641 (deposit of assets to secure future child support payments).

**§ 4566. Filing information in opposition to application**

**Comment.** Section 4566 continues the third sentence of subdivision (e) of former Civil Code Section 4710 (added by 1991 Cal. Stat. ch. 1141, § 3) without substantive change.

**§ 4567. Hearing and court order**

**Comment.** Section 4567 continues the fourth and fifth sentences of subdivision (e) of former Civil Code Section 4710 (added by 1991 Cal. Stat. ch. 1141, § 3) without substantive change. See also Sections 4600-4641 (deposit of assets to secure future child support payments).

**Article 4. Use of Deposit to Make Delinquent Support Payment****§ 4570. Court order for disbursement and for replenishment of account**

**Comment.** Section 4570 continues the first three sentences of subdivision (b) of former Civil Code Section 4710 (added by 1991 Cal. Stat. ch. 1141, § 3) without substantive change. See also Section 212 (verification of pleadings).

**§ 4571. Service on support obligor**

**Comment.** Section 4571 continues the fourth sentence of subdivision (b) of former Civil Code Section 4710 (added by 1991 Cal. Stat. ch. 1141, § 3) without substantive change. See also Section 212 (verification of pleadings).

**§ 4572. Service on depository institution and district attorney**

**Comment.** Section 4572 continues the fifth sentence of subdivision (b) of former Civil Code Section 4710 (added by 1991 Cal. Stat. ch. 1141, § 3) without substantive change.

**§ 4573. Payment where support paid through district attorney for child not receiving public assistance**

**Comment.** Section 4573 continues the third sentence of subdivision (f) of former Civil Code Section 4710 (added by 1991 Cal. Stat. ch. 1141, § 3) without substantive change. See also Section 3555 (forwarding support paid through designated county officer).

**CHAPTER 2. DEPOSIT OF ASSETS TO SECURE FUTURE CHILD SUPPORT PAYMENTS****Article 1. General Provisions****§ 4600. Purpose of chapter**

**Comment.** Section 4600 continues subdivision (i) of former Civil Code Section 4701.1 without change. See also Sections 4011 (priority of child support payments), 4012 (security for payment of child support), 4339 (security for payment of spousal support).

**§ 4601. "Deposit holder" defined**

**Comment.** Section 4601 is a new provision included for drafting convenience.

**§ 4602. Statement of receipts and disbursements**

**Comment.** Section 4602 continues subdivision (g) of former Civil Code Section 4701.1 without substantive change.

**§ 4603. Protection of deposit holder from liability**

**Comment.** Section 4603 continues subdivision (e) of former Civil Code Section 4701.1 without substantive change.

**§ 4604. Reimbursement of deposit holder for fees or costs not otherwise compensated**

**Comment.** Section 4604 continues subdivision (h) of former Civil Code Section 4701.1 without substantive change.

**Article 2. Order for Deposit of Assets****§ 4610. Issuance of order for deposit of assets**

**Comment.** Section 4610 continues the first two sentences of subdivision (a)(1) of former Civil Code Section 4701.1 without substantive change.

**§ 4611. Presumptions**

**Comment.** Section 4611 continues a portion of paragraph (4) of subdivision (a) of former Civil Code Section 4701.1 without substantive change.

**§ 4612. Grounds for defense to allegation that obligor-parent in arrears**

**Comment.** Section 4612 continues the first portion of paragraph (4) of subdivision (a) of former Civil Code Section 4701.1 without substantive change. See also Sections 4011 (priority of child support payments), 4506 (submitting list of places applied for employment where default in support due to unemployment), 4632 (grounds for motion to stop sale or use of asset).

**§ 4613. Determination by court of need for deposit order**

**Comment.** Section 4613 continues subdivision (b) of former Civil Code Section 4701.1 without substantive change.

**§ 4614. Determination by court of assets subject to order**

**Comment.** Section 4614 continues the first sentence of subdivision (c) of former Civil Code Section 4701.1 without substantive change.

**§ 4615. Providing bond in lieu of depositing cash or other assets**

**Comment.** Section 4615 continues the second sentence of subdivision (c) of former Civil Code Section 4701.1 without substantive change.

**§ 4616. Order that deposited asset be sold and proceeds deposited with deposit holder**

**Comment.** Section 4616 continues the third sentence of subdivision (a)(1) of former Civil Code Section 4701.1 without substantive change.

**§ 4617. Deposit of real property**

**Comment.** Section 4617 continues the last portion of paragraph (1) of subdivision (a) of former Civil Code Section 4701.1 without substantive change.

**Article 3. Ex Parte Restraining Orders****§ 4620. Ex parte restraining orders**

**Comment.** Section 4620 continues subdivision (d) of former Civil Code Section 4701.1 without substantive change, except that Section 4620 makes clear that the rule stated in subdivision (d) applies

only to the restraining order issued under Section 4620. The former provision stated that it applied to any order "issued pursuant to this section," thereby literally applying to any order issued under this chapter. The duration of the order that assets be deposited is specified in Section 4640.

#### Article 4. Use or Sale of Assets to Make Support Payments

##### § 4630. Use or sale of assets

**Comment.** Section 4630 continues paragraphs (2) and (3) of subdivision (a) of former Civil Code Section 4701.1 without substantive change. See also Section 4011 (priority of child support payments).

##### § 4631. Motion to stop a sale or use of assets

**Comment.** Section 4631 continues the last portion of paragraph (4) of subdivision (a) of former Civil Code Section 4701.1 without substantive change.

##### § 4632. Grounds for defense to allegation that obligor-parent in arrears

**Comment.** Section 4632 is a new provision included for the convenience of the statute user. See also Section 4011 (priority of child support payments).

#### Article 5. Return of Assets of Obligor

##### § 4640. Conditions for return of assets to obligor

**Comment.** Section 4640 continues the first portion of subdivision (f) of former Civil Code Section 4701.1 without substantive change.

##### § 4641. Release of real property

**Comment.** Section 4641 continues the last portion of subdivision (f) of former Civil Code Section 4701.1 without substantive change, except that Section 4641 makes clear that the deposit holder has the duty to record the certified release. The provision of former Section 4701.1 was unclear whether the deposit holder or the court clerk had this duty.

### CHAPTER 3. CHILD SUPPORT DELINQUENCY REPORTING

#### § 4700. Short title

**Comment.** Section 4700 continues former Civil Code Section 4750 in a shortened form.

#### § 4701. Child support delinquency reporting

**Comment.** Section 4701 continues the substance of former Civil Code Section 4752 with the omission of portions that were of a temporary or transitional nature. Federal law contains provisions for the program provided for in Section 4701. See Public Law 98-378 (HR 4325) Aug. 16, 1984. See also Section 4011 (priority of child support payments).

### CHAPTER 3.5. CIVIL PENALTY FOR CHILD SUPPORT DELINQUENCY

#### § 4720. "Support" defined

**Comment.** Section 4720 continues subdivision (m) of Civil Code Section 4700.11 (as added by 1991 Cal. Stat. ch. 110, § 10) without substantive change.

#### § 4721. Chapter applies only to child support installments due on or after January 1, 1992

**Comment.** Section 4721 continues subdivision (k) of Civil Code Section 4700.11 (as added by 1991 Cal. Stat. ch. 110, § 10) without substantive change.

#### § 4722. Notice of delinquency; financial penalty for failure to pay delinquent amount

**Comment.** Section 4722 continues subdivision (a) of Civil Code Section 4700.11 (as added by 1991 Cal. Stat. ch. 110, § 10) without substantive change. The reference to Section 4727 has been added.

**§ 4723. Execution and contents of notice of delinquency**

**Comment.** Subdivisions (a) and (b) of Section 4723 continue subdivision (b) of Civil Code Section 4700.11 (as added by 1991 Cal. Stat. ch. 110, § 10) without substantive change. Subdivision (c) continues subdivision (g) of Civil Code Section 4700.11 (as added by 1991 Cal. Stat. ch. 110, § 10) without substantive change.

**§ 4724. Service of notice of delinquency**

**Comment.** Section 4724 continues subdivision (c) of Civil Code Section 4700.11 (as added by 1991 Cal. Stat. ch. 110, § 10) without substantive change.

**§ 4725. Motion to obtain judgment; enforcement of judgment**

**Comment.** Section 4725 continues subdivision (e) of Civil Code Section 4700.11 (as added by 1991 Cal. Stat. ch. 110, § 10) without substantive change.

**§ 4726. Showing required to avoid imposition of penalties**

**Comment.** Section 4726 continues subdivision (d) of Civil Code Section 4700.11 (as added by 1991 Cal. Stat. ch. 110, § 10) without substantive change.

**§ 4727. Limit on amount of penalty**

**Comment.** Section 4727 continues the third sentence of subdivision (h) of Civil Code Section 4700.11 (as added by 1991 Cal. Stat. ch. 110, § 10) without substantive change.

**§ 4728. Enforcement of penalties**

**Comment.** Section 4728 continues subdivision (i) of Civil Code Section 4700.11 (as added by 1991 Cal. Stat. ch. 110, § 10) without substantive change. See also Section 273 (attorney's fees in action to enforce penalty).

**§ 4729. Utilization of penalties by district attorney**

**Comment.** Section 4729 continues subdivision (l) of Civil Code Section 4700.11 (as added by 1991 Cal. Stat. ch. 110, § 10) without substantive change.

**§ 4730. Penalties not considered at hearing to set or modify amount of current support**

**Comment.** Section 4730 continues subdivision (f) of Civil Code Section 4700.11 (as added by 1991 Cal. Stat. ch. 110, § 10) without substantive change.

**§ 4731. Subsequent notice of delinquency**

**Comment.** Section 4731 continues the first and second sentences of subdivision (h) of Civil Code Section 4700.11 (as added by 1991 Cal. Stat. ch. 110, § 10) without substantive change.

**§ 4732. Judicial Council forms**

**Comment.** Section 4732 continues subdivision (j) of Civil Code Section 4700.11 (as added by 1991 Cal. Stat. ch. 110, § 10) without substantive change.

## CHAPTER 4. UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT

## Article 1. General Provisions

**§ 4800. Short title**

**Comment.** Section 4800 continues former Code of Civil Procedure Section 1650 without substantive change, except that "Uniform Reciprocal Enforcement of Support Act" has been substituted for "Revised Reciprocal Enforcement of Support Act of 1968." See also Sections 3 (construction of provision drawn from uniform act), 14 (severability of provisions).

**§ 4801. Purpose**

**Comment.** Section 4801 continues former Code of Civil Procedure Section 1652 without change. See also Section 3 (construction of provision drawn from uniform act).

**§ 4802. Definitions**

**Comment.** Section 4802 continues former Code of Civil Procedure Section 1653 without change.

**§ 4803. Cumulative remedies; attorney's fees**

**Comment.** Section 4803 continues former Code of Civil Procedure Section 1654 without substantive change. See also Section 273 (attorney's fees and costs for enforcement of support order).

**§ 4804. Obligor in this state bound by duty of support, regardless of residence of obligee**

**Comment.** Section 4804 continues former Code of Civil Procedure Section 1655 without change. See also Sections 273 (attorney's fees and costs for enforcement of support order), 4803 (limitation on recovery of attorney's fees from the opposing party for prosecuting or defending action).

**§ 4805. Representation by private counsel**

**Comment.** Section 4805 continues former Code of Civil Procedure Section 1655.5 without change. See also Sections 273 (attorney's fees and costs for enforcement of support order), 4803 (limitation on recovery of attorney's fees from the opposing party for prosecuting or defending action).

**Article 2. Criminal Enforcement****§ 4810. Extradition**

**Comment.** Section 4810 continues former Code of Civil Procedure Section 1660 without substantive change.

**§ 4811. Prerequisite to demand for surrender by Governor**

**Comment.** Section 4811 continues former Code of Civil Procedure Section 1661 without change.

**Article 3. Civil Enforcement****§ 4820. Enforceable duties of support; presumption of presence in responding state**

**Comment.** Section 4820 continues former Code of Civil Procedure Section 1670 without change.

**§ 4821. Right of state or political subdivision to bring support action**

**Comment.** Section 4821 continues former Code of Civil Procedure Section 1671 without change.

**§ 4822. Enforcement of duty of support by action; defenses based on relationship not available**

**Comment.** Section 4822 continues former Code of Civil Procedure Section 1672 without change. See also Section 200 (jurisdiction in superior court).

**§ 4824. Verification and contents of complaint; identification material; place of filing; transfer of proceeding**

**Comment.** Section 4824 continues former Code of Civil Procedure Section 1673 without change.

**§ 4825. Initiation of proceedings by prosecuting attorney or Attorney General**

**Comment.** Section 4825 continues former Code of Civil Procedure Section 1674 (as amended by 1991 Cal. Stat. ch. 495, § 1.5) without change. See also Sections 273 (attorney's fees and costs for enforcement of support order), 4803 (limitation on recovery of attorney's fees from the opposing party for prosecuting or defending action).

**§ 4826. Complaint by person having custody of minor obligee**

**Comment.** Section 4826 continues former Code of Civil Procedure Section 1675 without change.

**§ 4827. Certification to responding state; accompanying papers; transmittal to state information agency**

**Comment.** Section 4827 continues former Code of Civil Procedure Section 1676 without change.

**§ 4828. Fees and costs; collection**

**Comment.** Section 4828 continues former Code of Civil Procedure Section 1677 without change.

**§ 4829. Arrest of obligor**

**Comment.** Section 4829 continues former Code of Civil Procedure Section 1678 without substantive change.

**§ 4830. Attorney General as state information agency; duties**

**Comment.** Section 4830 continues former Code of Civil Procedure Section 1679 without change.

**§ 4831. Duties of responding court; prosecution of case by prosecuting attorney or Attorney General**

**Comment.** Section 4831 continues former Code of Civil Procedure Section 1680 (as amended by 1991 Cal. Stat. ch. 495, § 2) without change.

**§ 4832. Tracing obligor or obligor's property; forwarding documents; reports to initiating court**

**Comment.** Section 4832 continues former Code of Civil Procedure Section 1681 without change.

**§ 4833. Order for support or reimbursement; enforcement of order**

**Comment.** Section 4833 continues former Code of Civil Procedure Section 1682 without change. See also Sections 273 (attorney's fees and costs for enforcement of support order), 4803 (limitation on recovery of attorney's fees from the opposing party for prosecuting or defending action).

**§ 4834. Procedure where obligee absent in contested case**

**Comment.** Section 4834 continues former Code of Civil Procedure Section 1683 without change.

**§ 4835. Sending copy of support order to initiating court and obligor**

**Comment.** Section 4835 continues former Code of Civil Procedure Section 1684 without change.

**§ 4836. Terms and conditions to ensure obligor's compliance**

**Comment.** Section 4836 continues former Code of Civil Procedure Section 1685 without substantive change.

**§ 4837. Duties of responding court with respect to payments by obligor**

**Comment.** Section 4837 continues former Code of Civil Procedure Section 1686 without substantive change. See also Section 4011 (priority of child support payments).

**§ 4838. Duties of initiating court with respect to payments**

**Comment.** Section 4838 continues former Code of Civil Procedure Section 1687 without change.

**§ 4839. Competency of spouse to testify; privileges not applicable**

**Comment.** Section 4839 continues former Civil Code Section 1688 without change. Section 4839 is the same as Section 3551.

**§ 4840. Effect of support order on other support orders**

**Comment.** Section 4840 continues former Code of Civil Procedure Section 1689 without change. See also Section 4011 (priority of child support payments).

**§ 4841. Jurisdiction: other proceedings**

**Comment.** Section 4841 continues former Code of Civil Procedure Section 1690 without change.

**§ 4842. Stay of proceedings**

**Comment.** Section 4842 continues former Code of Civil Procedure Section 1691 without change.

**§ 4843. Obligor and obligee in different counties of state**

**Comment.** Section 4843 continues former Code of Civil Procedure Section 1692 without change.

**§ 4844. Declaration of foreign jurisdiction to be a reciprocating state**

**Comment.** Section 4844 continues former Code of Civil Procedure Section 1693 without change.

**§ 4845. Rules of evidence; interference with rights of custody and visitation**

**Comment.** Section 4845 continues former Code of Civil Procedure Section 1694 without change.

**§ 4846. Paternity issue**

**Comment.** Section 4846 continues former Code of Civil Procedure Section 1695 without change.

**§ 4847. Appeals in public interest by Attorney General**

**Comment.** Section 4847 continues former Code of Civil Procedure Section 1696 without substantive change.

**§ 4848. Additional remedies where foreign support order; registration of support order made in this state**

**Comment.** Section 4848 continues former Code of Civil Procedure Section 1697 without change.

**§ 4849. Registration of foreign support or assignment order**

**Comment.** Section 4849 continues former Code of Civil Procedure Section 1698 without change.

**§ 4850. Registry of foreign support orders**

**Comment.** Section 4850 continues former Code of Civil Procedure Section 1698.1 without change.

**§ 4851. Prosecuting attorney or Attorney General represents public interest in enforcing support obligations**

**Comment.** Section 4851 continues former Code of Civil Procedure Section 1698.2 (as amended by 1991 Cal. Stat. ch. 495, § 3) without change. See also Sections 273 (attorney's fees and costs for enforcement of support order), 4803 (limitation on recovery of attorney's fees from the opposing party for prosecuting or defending action).

**§ 4852. Procedure for registration of foreign support order; enforcement of registered order**

**Comment.** Section 4852 continues former Code of Civil Procedure Section 1698.3 without substantive change.

**§ 4853. Effect of registration of foreign support or assignment order; enforcement of registered order**

**Comment.** Section 4853 continues former Code of Civil Procedure Section 1699 (as amended by 1991 Cal. Stat. ch. 110, § 16) without substantive change.

**§ 4854. Support orders registered in court of county other than that of rendering court; service of copy by mail**

**Comment.** Section 4854 continues former Code of Civil Procedure Section 1699.4 without change.

**CHAPTER 5. ENFORCEMENT BY WRIT OF EXECUTION****§ 5100. Enforcement of child or family support without prior court approval**

**Comment.** Section 5100 continues the first sentence of subdivision (a) of former Civil Code Section 4383 without substantive change. As to spousal support, see Section 5101.

Section 5100 permits enforcement of child and family support orders by execution without the necessity of obtaining prior court approval under Section 290, so long as the amounts sought to be collected are not more than 10 years overdue. See Sections 5100, 5103, 290, 291 (court approval required before amounts due more than 10 years may be enforced). See also Sections 273 (attorney's fees and costs for enforcement of support order), 4011 (priority of child support payments), 4500 (support orders enforceable under this code); Code Civ. Proc. § 683.130 (application for renewal of



judgment). See also the definition of "support" in Section 150 (support with reference to minor child includes maintenance and education).

For background on former Civil Code Section 4383, see *Tentative Recommendation Proposing the Enforcement of Judgments Law*, 15 Cal. L. Revision Comm'n Reports 2001, 2616 (1980).

**§ 5101. Enforcement of spousal support without prior court approval**

**Comment.** Section 5101 continues the second sentence of subdivision (a) of former Civil Code Section 4383 without substantive change. A reference to Section 290 is added, to conform to the scheme used in Section 5100. See also Sections 273 (attorney's fees and costs for enforcement of support order), 4011 (priority of child support payments); Code Civ. Proc. § 683.130 (application for renewal of judgment).

**§ 5102. Period for enforcement of installment payments**

**Comment.** Section 5102 continues without substantive change the second sentence of former Civil Code Section 4384 insofar as that provision applied to support orders payable in installments.

**§ 5103. Enforcement of support against employee pension benefit plan**

**Comment.** Subdivisions (a) and (b) of Section 5103 continue the third and fourth sentences of subdivision (a) of former Civil Code Section 4383 without substantive change except (1) "the proceeding in which the support order was obtained" has been substituted for "a proceeding under this part," meaning the former Family Law Act, former Part 5 (commencing with Section 4000) of Division 4 of the Civil Code which was used in the former provision and (2) a reference to "family" support has been added to subdivisions (a) and (b). The addition of the reference to "family" support reflects the rule stated in Section 4501. Subdivision (c) continues subdivision (c) of former Civil Code Section 4383 without substantive change. See also Sections 80 ("employee pension benefit plan" defined), 273 (attorney's fees and costs for enforcement of support order), 4011 (priority of child support payments).

**§ 5104. Application for writ**

**Comment.** Section 5104 continues subdivision (b) of former Civil Code Section 4383 without substantive change. Section 5104 provides technical requirements that must be complied with in addition to the general provisions governing execution. The affidavit provides the court clerk with the information needed to issue the writ and informs the judgment debtor concerning the nature of the debt sought to be collected. If no interest is sought on the amount due and unpaid, the affidavit need state only the total amount. If interest is sought, the affidavit need state only the total amount of interest and also state the amount of each unpaid installment and the date it became due so that the judgment debtor can verify that the interest was accurately computed. See also Section 273 (attorney's fees and costs for enforcement of support order); Code Civ. Proc. § 683.130 (application for renewal of judgment).

CHAPTER 6. EARNINGS ASSIGNMENT ORDER

Article 1. Definitions

**§ 5200. Application of definitions**

**Comment.** Section 5200 continues the introductory clause of former Civil Code Section 4390 (as amended by 1991 Cal. Stat. ch. 110, § 5) without substantive change.

**§ 5202. "Assignment order"**

**Comment.** Section 5202 supersedes subdivision (a) of former Civil Code Section 4390 (as amended by 1991 Cal. Stat. ch. 110, § 5) without substantive change. See also Section 5208 (defining "earnings assignment order for support").

**§ 5204. "Due date of support payments"**

**Comment.** Section 5204 continues subdivision (b) of former Civil Code Section 4390 (as amended by 1991 Cal. Stat. ch. 110, § 5) without substantive change.

**§ 5206. "Earnings"**

**Comment.** Section 5206 continues subdivision (c) of former Civil Code Section 4390 (as amended by 1991 Cal. Stat. ch. 110, § 5) without substantive change.

**§ 5208. "Earnings assignment order for support"**

**Comment.** Section 5208 is a new provision.

**§ 5210. "Employer"**

**Comment.** Section 5210 continues subdivision (d) of former Civil Code Section 4390 (as amended by 1991 Cal. Stat. ch. 110, § 5) without substantive change. See also Section 4505 (deduction from earnings of state employee for court ordered support).

**§ 5212. "IV-D Case"**

**Comment.** Section 5212 continues subdivision (e) of former Civil Code Section 4390 (as amended by 1991 Cal. Stat. ch. 110, § 5) without substantive change.

**§ 5214. "Obligee"; "assigned obligee"**

**Comment.** Section 5214 continues subdivision (f) of former Civil Code Section 4390 (as amended by 1991 Cal. Stat. ch. 110, § 5) without substantive change.

**§ 5216. "Obligor"**

**Comment.** Section 5216 continues subdivision (g) of former Civil Code Section 4390 (as amended by 1991 Cal. Stat. ch. 110, § 5) without substantive change.

**§ 5220. "Timely payment"**

**Comment.** Section 5220 continues subdivision (i) of former Civil Code Section 4390 (as amended by 1991 Cal. Stat. ch. 110, § 5) without change.

**Article 2. General Provisions****§ 5230. Support order must include earnings assignment order**

**Comment.** Section 5230 continues subdivision (a) of former Civil Code Section 4390.3 (as amended by 1991 Cal. Stat. ch. 110, § 6) without substantive change except that the third sentence of subdivision (a) of former Section 4390.3 (now subdivision (b) of Section 5230) has been limited to enforcement of a support order made or modified before July 1, 1990. (Chapter 110 was superseded by a later enactment — 1991 Cal. Stat. ch. 1091, § 16 — that did not contain the new language added by Chapter 110 relating to liquidation of an arrearage or past due support, but the failure to continue the this language appears to have been inadvertent.) See also Section 5251 (procedure for obtaining assignment order where support order first issued or modified before July 1, 1990). The introductory clause of the first sentence of former Section 4390.3 which made the provision now found in subdivision (a) of Section 5230 applicable on and after July 1, 1990, has been omitted as unnecessary.

**§ 5231. Order binds existing and future employers**

**Comment.** Section 5231 continues the substance of subdivision (b) of former Civil Code Section 4390.3 (as amended by 1991 Cal. Stat. ch. 110, § 6) and subdivision (c) of former Civil Code Section 4390.7.

**§ 5232. Manner of service on employer**

**Comment.** Section 5232 continues the third sentence of subdivision (a) of former Civil Code Section 4390.8 without substantive change.

**§ 5233. Commencement of withholding by employer**

**Comment.** Section 5233 continues the first two sentences of subdivision (a) of former Civil Code Section 4390.8 without substantive change. The language that the "employer shall commence withholding pursuant to the assignment order from all earnings of the employee payable for any pay period of that employee which ends after the assignment becomes effective" has been omitted, since the section provides that the assignment order becomes effective as soon as possible but not later than 10 days after service of the order on an employer and requires withholding from all earnings payable to the employee after the order becomes effective. The introductory clause is new and recognizes that the order itself may provide for a later effective date.

**§ 5234. Delivery of copy of order and statement of rights to obligor**

**Comment.** Section 5234 continues subdivision (b) of former Civil Code Section 4390.8 without substantive change. See also Section 5295 (Judicial Council to prepare form for written statement of the obligor's rights).

**§ 5235. Employer to withhold and forward support**

**Comment.** Section 5235 continues subdivision (a) of former Civil Code Section 4390.10 without substantive change. See also Section 3555 (forwarding support payments paid through designated county officer).

**§ 5236. Consolidated check by employer**

**Comment.** Section 5236 continues subdivision (b) of former Civil Code Section 4390.16 (as amended by 1991 Cal. Stat. ch. 110, § 9 and 1991 Cal. Stat. ch. 542, § 4) without substantive change.

**§ 5237. Obligees notice of change of address**

**Comment.** Section 5237 continues former Civil Code Section 4390.13 without substantive change. See also Section 3555 (forwarding support payments paid through designated county officer).

**§ 5238. Priorities where order includes both current support and arrearages**

**Comment.** Section 5238 continues subdivision (a) of former Civil Code Section 4390.12 (as amended by 1991 Cal. Stat. ch. 110, § 8) without substantive change.

**§ 5239. Manner of computing arrearages of support payments**

**Comment.** Section 5239 continues former Civil Code Section 4390.2 without substantive change.

**§ 5240. Termination of order**

**Comment.** Section 5240 continues former Civil Code Section 4390.14 without substantive change.

**§ 5241. Penalty for employer failing to comply with order**

**Comment.** Section 5241 continues subdivision (b) of former Civil Code Section 4390.10 without substantive change. See also Sections 273 (attorney's fees and costs for enforcement of support order), 5290 (civil penalty for using an assignment order as grounds for refusing to hire or for discharging or taking disciplinary action against employee).

**§ 5242. Service of order creates lien**

**Comment.** Section 5242 continues subdivision (c) of former Civil Code Section 4390.10 without substantive change.

**§ 5243. Priority of order over attachment, execution, or other assignment**

**Comment.** Section 5243 continues subdivision (b) of former Civil Code Section 4390.12 (as amended by 1991 Cal. Stat. ch. 110, § 8) without substantive change.

**§ 5244. Application of chapter to district attorney**

**Comment.** Section 5244 continues former Civil Code Section 4390.1 without substantive change. The reference to "existing" law has been omitted, so that this chapter will apply to all enforcement or collection duties otherwise imposed on the district attorney by law.

**§ 5245. Use of other civil and criminal remedies not limited**

**Comment.** Section 5245 continues former Civil Code Section 4390.19 without substantive change. For a provision relating to withholding from earnings of a state employee, see Section 4505.

**Article 3. Support Orders Issued or Modified Before July 1, 1990****§ 5250. Article applies to support orders first issued or modified before July 1, 1990**

**Comment.** Section 5250 continues the first sentence of subdivision (a) of former Civil Code Section 4390.5 (as amended by 1991 Cal. Stat. ch. 110, § 7) without substantive change.

**§ 5251. Procedures available for obtaining assignment order**

**Comment.** Section 5251 continues the second sentence of subdivision (a) of former Civil Code Section 4390.5 (as amended by 1991 Cal. Stat. ch. 110, § 7) without substantive change.

**§ 5252. Application for order under this article**

**Comment.** Subdivision (a) of Section 5252 continues the third sentence of subdivision (a) of former Civil Code Section 4390.5 (as amended by 1991 Cal. Stat. ch. 110, § 7) without substantive change. Subdivision (b) continues subdivisions (d) and (e) of former Civil Code Section 4390.5 (as amended by 1991 Cal. Stat. ch. 110, § 7) without substantive change. Subdivision (c) continues subdivision (b) of former Civil Code Section 4390.5 without substantive change.

**§ 5253. Issuance of assignment order**

**Comment.** Section 5253 continues subdivision (c) of former Civil Code Section 4390.5 (as amended by 1991 Cal. Stat. ch. 110, § 7) without substantive change. The last sentence of subdivision (c) of former Section 4390.5 is omitted as unnecessary. The requirement of subdivision (c) of former Section 4390.5 that the order be one "requiring the obligor to assign to the obligee" has been omitted and Section 5253 is based on the concept that the assignment order itself operates without any need for the obligor to make an assignment to the obligee. There was no actual requirement in former law that the obligor make an assignment to the obligee.

**Article 4. Stay of Service of Assignment Order****§ 5260. Finding of good cause required to stay order**

**Comment.** Section 5260 continues subdivision (c) of former Civil Code Section 4390.3 (as amended by 1991 Cal. Stat. ch. 110, § 6) without substantive change.

**§ 5261. Termination of stay**

**Comment.** Section 5261 continues former Civil Code Section 4390.4 without substantive change.

**Article 5. Motion to Quash Assignment Order****§ 5270. Grounds for motion to quash**

**Comment.** Section 5270 continues subdivisions (a), (b) and (c) of former Civil Code Section 4390.9 without substantive change. The reference to the time for making the motion which appeared in subdivision (a) of former Civil Code Section 4390.9 has been omitted as unnecessary, because this provision duplicated a provision of former Civil Code Section 4390.11, now Family Code Section 5271.

**§ 5271. Filing motion and notice of motion to quash; setting for hearing; service on obligor**

**Comment.** Section 5271 continues former Civil Code Section 4390.11 without substantive change. In subdivision (a), the phrase "service on the obligor of notice of the order" which was used in the former provision has been replaced by "delivery of the copy of the assignment order to the obligor." This revision makes subdivision (a) consistent with Section 5234 (delivery of copy of assignment order to obligor).

**§ 5272. Modification of order to reflect correct or allowable amount**

**Comment.** Section 5272 continues subdivision (d) of former Civil Code Section 4390.9 without substantive change.

**Article 6. Information Concerning Address and Employment of Obligor****§ 5280. Use of California parent locator service**

**Comment.** Section 5280 continues former Civil Code Section 4390.6 without substantive change.

**§ 5281. Obligor to inform obligee of change of employment**

**Comment.** Section 5281 continues subdivision (a) of former Civil Code Section 4390.7 without substantive change.

**§ 5282. Employer to notify obligee when obligor leaves employment**

**Comment.** Section 5282 continues subdivision (b) of former Civil Code Section 4390.7 without substantive change. The phrase "designated in the assignment order" has been added to make clear that the notice is to be given to the district attorney or other person designated in the order to receive the payment. See also Section 5214 ("obligee" defined).

**§ 5283. Employer to provide information to district attorney**

**Comment.** Section 5283 continues subdivisions (a) and (c) of former Civil Code Section 4390.16 (as amended by 1991 Cal. Stat. ch. 110, § 9 and 1991 Cal. Stat. ch. 542, § 4) without substantive change.

**Article 7. Prohibited Practices****§ 5290. Assignment not grounds for refusal to hire, discharge, or disciplinary action**

**Comment.** Section 5290 continues former Civil Code Section 4390.17 without substantive change. See also Section 5241 (penalty for employer failing to comply with order).

**Article 8. Judicial Council Forms****§ 5295. Forms to implement statute**

**Comment.** Section 5295 continues former Civil Code Section 4390.15 without substantive change.

COMMENTS TO AB 2650

## DIVISION 10. PREVENTION OF DOMESTIC VIOLENCE

### PART 1. DEFINITIONS

#### § 5500. Application of definitions

**Comment.** Section 5500 continues the introductory clause of former Code of Civil Procedure Section 542 without substantive change. For additional definitions of words and phrases used in this division, see, e.g., Sections 55 ("abuse"), 60 ("cohabitant; former cohabitant"), 70 ("domestic violence").

#### § 5501. Additional definitions

**Comment.** Section 5501 is new and is included for the convenience of code uses.

#### § 5505. "Protective order"

**Comment.** Section 5505 continues subdivision (d) of former Code of Civil Procedure Section 542 without substantive change.

### PART 2. GENERAL PROVISIONS

#### § 5510. Short title

**Comment.** Section 5510 continues former Code of Civil Procedure Section 541 with the substitution of "Law" for "Act."

#### § 5511. Purposes of this division

**Comment.** Section 5511 continues former Code of Civil Procedure Section 540 without substantive change. See also Sections 55 ("abuse" defined), 57 ("affinity" defined), 60 ("cohabitant" and "former cohabitant" defined), 70 ("domestic violence" defined).

#### § 5512. Fees

**Comment.** Section 5512 continues former Code of Civil Procedure Section 546.5 without substantive change. The phrase "order obtained under this division" has been substituted for "order obtained under this section" in subdivisions (b) and (d) of Section 5512 to correct an obvious typographical error.

#### § 5513. Order limiting visitation to situations in which third person is present

**Comment.** Section 5513 continues former Code of Civil Procedure Section 547.5 (as amended by 1991 Cal. Stat. ch. 321, § 3) without substantive change. Mediation of the custody or visitation issue is required by Chapter 11 (commencing with Section 3155) of Part 2 of Division 8. See also Sections 75 ("domestic violence prevention order" defined), 3131 (action by district attorney where child taken or detained in violation of visitation order), 3044 (parent convicted under certain Penal Code provisions not to be allowed unsupervised visitation with child); Code Civ. Proc. § 917.7 (order not automatically stayed by appeal). For comparable provisions, see Sections 7604(b) and 3100(b).

#### § 5514. Conditions for issuance of mutual restraining order

**Comment.** Section 5514 continues former Code of Civil Procedure Section 545.5 without substantive change. The word "telephoning" has been added to conform to Section 5505. The reference to "other named persons described in subdivision (a) of Section 70" has been substituted for "other named family and household members" to conform to the revision of former Code of Civil Procedure Section 542 by 1990 Cal. Stat. ch. 752, § 2, which eliminated the use of the phrase "family and household members" in the former Domestic Violence Prevention Act and replaced it with the listing of the persons described in subdivision (a) of Section 70. See also Sections 55 ("abuse" defined), 70 ("domestic violence" defined). For comparable provisions, see Sections 7711, 2036.

**§ 5515. Required statement and notice in order**

**Comment.** Section 5515 continues former Code of Civil Procedure Section 552 without substantive change.

**§ 5516. Court to provide information to parties concerning terms and effect of order**

**Comment.** Section 5516 continues subdivision (f) of former Code of Civil Procedure Section 550 (as amended by 1991 Cal. Stat. ch. 953, § 3) without substantive change.

**§ 5517. Explicit statement of address not required**

**Comment.** Section 5517 continues the last sentence of former Code of Civil Procedure Section 545 without change.

**§ 5518. Remedies in addition to other remedies**

**Comment.** Section 5518 continues former Code of Civil Procedure Section 549 without substantive change. "Petitioner" has been substituted for "plaintiff" to conform to the revisions made in the Domestic Violence Prevention Act by 1990 Cal. Stat. ch. 752.

**§ 5519. Support person for victim of domestic violence**

**Comment.** Section 5519 continues former Civil Code Section 4351.6 with the changes noted below. See also Section 70 ("domestic violence" defined).

Section 5519 applies in any case where a domestic violence prevention order has been issued. See Section 75 (defining "domestic violence prevention order"). Former Section 4351.6 included a listing of statutory provisions that may have been less inclusive than those listed in Section 75.

Under subdivision (d) of Section 5519, if a court has issued a domestic violence prevention order, a support person may accompany a party protected by the order during a mediation session held pursuant to an action or proceeding under this code. The former Civil Code section applied only to a mediation session held pursuant to an action or proceeding under the former Family Law Act, former Part 5 (commencing with Section 4000) of Division 4 of the Civil Code.

Subdivision (e) of former Section 4351.6 has been omitted from Section 5519 because that subdivision merely duplicated a provision which is continued in subdivision (b) of Section 5519.

Insofar as former Section 4351.6 applied to Section 527.6 of the Code of Civil Procedure, the substance of the former section is continued in substance in new subdivision (f) of Section 527.6.

**§ 5520. Judicial Council forms and instructions**

**Comment.** Section 5520 continues without substantive change former Code of Civil Procedure Section 543 and provisions of subdivisions (b) and (c) of Code of Civil Procedure Section 546 (as amended by 1991 Cal. Stat. ch. 953, § 1.5) that required the Judicial Council to prescribe forms.

**PART 3. TEMPORARY RESTRAINING ORDERS****CHAPTER 1. GENERAL PROVISIONS****§ 5530. Issuance upon affidavit which shows reasonable proof of past act or acts of abuse**

**Comment.** Section 5530 continues the first and fourth sentences of former Code of Civil Procedure Section 545 without substantive change. For general provisions relating to the granting of a temporary restraining order, see Sections 240-244. See also Sections 70 ("domestic violence" defined), 55 ("abuse" defined).

If the temporary restraining order is granted without notice, the matter shall be made returnable on an order requiring cause to be shown why the order should not be granted, on the earliest day that the business of the court will permit, but not later than 20 days or, if good cause appears to the court, 25 days from the date of the order. The court may on motion of the party who obtained the order or upon its own motion shorten the time for service on the opposing party. See Section 242. As to the reissuing



of a temporary restraining order that has been dissolved by the court for failure to serve the opposing party on time, see Section 245.

**§ 5531. Persons who may be granted temporary restraining order**

**Comment.** Section 5531 continues the second and third sentences of former Code of Civil Procedure Section 545 without substantive change. See also Section 55 ("abuse" defined).

CHAPTER 2. ORDERS ISSUABLE EX PARTE

**§ 5550. Types of orders that may be issued ex parte**

**Comment.** Section 5550 continues the first sentence of subdivision (a) of former Code of Civil Procedure Section 546 (as amended by 1991 Cal. Stat. ch. 953, § 1.5) with the changes noted below. For general provisions relating to temporary restraining orders, see Sections 240-244. As to when notice to the other party is required, see Section 241. For issuance of orders described in subdivision (a) after notice and hearing, see Section 5750.

Section 5550 sets out in detail the orders that were incorporated by the reference in former Section 546 to the orders set forth in "subdivision (a) of Section 4359 of the Civil Code" except that Section 5550 omits the order set forth in paragraph (1) of the first paragraph of subdivision (a) of former Civil Code Section 4359 (order "restraining any person from transferring, encumbering, hypothecating, concealing, or in any way disposing of any property, real or personal, whether community, quasi-community, or separate, except in the usual course of business or for the necessities of life, and if the order is directed against a party, requiring him or her to notify the other party of any proposed extraordinary expenditures and to account to the court for all extraordinary expenditures"). The order set forth in paragraph (1) of the first paragraph of subdivision (a) of former Civil Code Section 4359 has been omitted because the order does not relate to abuse or domestic violence. See Sections 55 ("abuse" defined), 70 ("domestic violence" defined).

After notice and hearing, an order described in paragraph (2) of subdivision (a) of Section 5550 may be obtained upon a lesser showing that is required by that paragraph. See Section 5751 (requirement for issuance of order, after notice and hearing, excluding party from dwelling).

Section 5550 adds a specific reference to "telephoning" in subdivision (a)(1) to conform to Section 5505. The terms "petitioner" and "respondent" are used in Section 5550 to conform to the revisions of the Domestic Violence Prevention Act made by 1990 Cal. Stat. ch. 752. See also Sections 55 ("abuse" defined), 70 ("domestic violence" defined).

**§ 5551. Requirement for issuance of order excluding party from residence or dwelling**

**Comment.** Section 5551 continues the fifth sentence of subdivision (a) of former Code of Civil Procedure Section 546 (as amended by (as amended by 1991 Cal. Stat. ch. 953, § 1.5) without substantive change. "Petitioner" has been substituted for "plaintiff" to conform to the revisions of the Domestic Violence Prevention Act made by 1990 Cal. Stat. ch. 752. The reference to Section 2035(c) has been added. See Section 2035(c) (order in marriage dissolution or nullity proceeding for exclusion of either party from family dwelling or from dwelling of the other party). After notice and hearing, the court may issue an order excluding one party from a residence or dwelling upon a lesser showing than is required by Sections 5550(a)(2) and 5551. See Section 5751.

PART 4. EMERGENCY PROTECTIVE ORDERS

CHAPTER 1. GENERAL PROVISIONS

**§ 5600. Application of provisions of this chapter**

**Comment.** Section 5600 is a new provision that is included for drafting convenience. See also Section 5505 (defining "protective order").

**§ 5601. Designation of judge or court officer to orally issue ex parte emergency protective order**

**Comment.** Section 5601 continues the first sentence of subdivision (b) of former Code of Civil Procedure Section 546 (as amended by 1991 Cal. Stat. ch. 953, § 1.5) without change.

**§ 5602. Reducing order to writing and signing order**

**Comment.** Section 5602 continues provisions of subdivisions (b) and (c) of former Code of Civil Procedure Section 546 (as amended by 1991 Cal. Stat. ch. 953, § 1.5) without substantive change.

**§ 5603. Expiration of order**

**Comment.** Section 5603 continues provisions of subdivisions (b) and (c) of former Code of Civil Procedure Section 546 (as amended by 1991 Cal. Stat. ch. 953, § 1.5) without substantive change.

**§ 5604. Officer to carry copies of order**

**Comment.** Section 5604 continues provisions of subdivisions (b) and (c) of former Code of Civil Procedure Section 546 (as amended by 1991 Cal. Stat. ch. 953, § 1.5) without substantive change.

**§ 5605. Service, filing, and delivery of copy of order**

**Comment.** Subdivision (a) of Section 5605 continues the substance of a requirement of subdivision (b) and subdivision (c) of former Code of Civil Procedure Section 546 (as amended by 1991 Cal. Stat. ch. 953, § 1.5). Subdivision (b) continues the substance of a requirement of subdivision (b) of former Code of Civil Procedure Section 546 (as amended by 1991 Cal. Stat. ch. 953, § 1.5). Subdivision (c) continues the substance of a requirement of subdivision (c) of former Code of Civil Procedure Section 546 (as amended by 1991 Cal. Stat. ch. 953, § 1.5).

**§ 5606. Enforcement of order**

**Comment.** Subdivision (a) of Section 5606 continues the substance of a requirement of subdivision (b) and subdivision (c) of former Code of Civil Procedure Section 546 (as amended by 1991 Cal. Stat. ch. 953, § 1.5). Subdivision (b) continues the substance of a requirement of subdivision (b) of former Code of Civil Procedure Section 546 (as amended by 1991 Cal. Stat. ch. 953, § 1.5). Subdivision (c) continues the substance of a provision of subdivision (b) and subdivision (c) of former Code of Civil Procedure Section 546 (as amended by 1991 Cal. Stat. ch. 953, § 1.5).

CHAPTER 2. EMERGENCY PROTECTIVE  
ORDER WHERE DANGER OF DOMESTIC VIOLENCE

**§ 5650. Issuance of ex parte emergency protective order where danger of domestic violence**

**Comment.** Section 5650 continues the second, third, and fourth sentences of subdivision (b) of former Code of Civil Procedure Section 546 (as amended by 1991 Cal. Stat. ch. 953, § 1.5) without substantive change. The language "by the person against whom the order is sought" has been added. See Sections 55 ("abuse" defined), 70 ("domestic violence" defined), 5505 ("protective order" defined).

**§ 5651. Finding required to issue order**

**Comment.** The first sentence of Section 5651 continues the fifth sentence of subdivision (b) of former Code of Civil Procedure Section 546 (as amended by 1991 Cal. Stat. ch. 953, § 1.5) without substantive change. The second sentence continues a provision of subdivision (b) of former Code of Civil Procedure Section 546 (as amended by 1991 Cal. Stat. ch. 953, § 1.5) without substantive change. See also Sections 70 ("domestic violence" defined), 5505 ("protective order" defined).

**§ 5652. Contents of order**

**Comment.** Section 5652 continues the fourth sentence of subdivision (a) and portions of subdivision (b) of former Code of Civil Procedure Section 546 (as amended by 1991 Cal. Stat. ch. 953, § 1.5) without substantive change. "Restrained party" has been substituted for "defendant."

CHAPTER 3. EMERGENCY PROTECTIVE  
ORDER WHERE CHILD IN DANGER OF ABUSE

**§ 5700. Issuance of ex parte order where child in danger of abuse**

**Comment.** Subdivision (a) of Section 5700 continues the first sentence of the first paragraph of subdivision (c) of former Code of Civil Procedure Section 546 (as amended by 1991 Cal. Stat. ch. 953, § 1.5) without substantive change. See Section 55 ("abuse" defined). Subdivision (b) continues the second sentence of the first paragraph of subdivision (c) of former Section 546 (as amended by 1991 Cal. Stat. ch. 953, § 1.5) without substantive change. Subdivision (c) continues the last sentence of the first paragraph of subdivision (c) of former Section 546 (as amended by 1991 Cal. Stat. ch. 953, § 1.5) without substantive change.

**§ 5701. Finding required to issue order**

**Comment.** Section 5701 continues the first sentence of the second paragraph and the second to last paragraph of subdivision (c) of former Code of Civil Procedure Section 546 (as amended by 1991 Cal. Stat. ch. 953, § 1.5) without substantive change. See also Section 55 ("abuse" defined).

**§ 5702. Contents of order**

**Comment.** Section 5702 continues portions of subdivision (c) of former Code of Civil Procedure Section 546 (as amended by 1991 Cal. Stat. ch. 953, § 1.5) without substantive change.

**§ 5703. Application for more permanent restraining order**

**Comment.** Section 5703 continues a portion of subdivision (c) of former Code of Civil Procedure Section 546 (as amended by 1991 Cal. Stat. ch. 953, § 1.5) without substantive change.

PART 5. ORDERS ISSUABLE AFTER NOTICE AND HEARING

**§ 5750. Order issuable under Section 5550**

**Comment.** Section 5750 continues the first sentence of subdivision (a)(1) and the first sentence of subdivision (a)(2) of former Code of Civil Procedure 547 (as amended by 1991 Cal. Stat. ch. 953, § 2) without substantive change except that subdivision (a) of Section 5750 makes clear that the court may issue, after notice and a hearing, an order set forth in paragraph (3) of subdivision (a) of Section 5550. See also Section 5751 (required finding for issuance, after notice and a hearing, of an order excluding one party from dwelling).

**§ 5751. Order excluding party from dwelling**

**Comment.** Section 5751 continues the second sentence of subdivision (a)(1) and the second sentence of subdivision (a)(2) of former Code of Civil Procedure Section 547 (as amended by 1991 Cal. Stat. ch. 953, § 2) without substantive change. If an order excluding a party from the dwelling is issued ex parte, additional findings are required. See Sections 5550(a)(2)(A), 5551.

**§ 5752. Order that presumed natural father pay child support**

**Comment.** Section 5752 continues subdivision (b) of former Code of Civil Procedure Section 547 (as amended by 1991 Cal. Stat. ch. 953, § 2) without substantive change.

**§ 5753. Order for restitution for loss of earnings and out-of-pocket expenses**

**Comment.** Section 5753 continues subdivision (c) of former Code of Civil Procedure Section 547 (as amended by 1991 Cal. Stat. ch. 953, § 2) without substantive change. See also Section 55 ("abuse" defined).

**§ 5754. Order to participate in counseling**

**Comment.** Section 5754 continues subdivision (d) of former Code of Civil Procedure Section 547 (as amended by 1991 Cal. Stat. ch. 953, § 2). See also Section 70 ("domestic violence" defined).

**§ 5755. Order for payment of attorney's fees and costs**

**Comment.** Section 5755 continues subdivision (e) of former Code of Civil Procedure Section 547 (as amended by 1991 Cal. Stat. ch. 953, § 2) without substantive change. See also Sections 270-275 (general provisions for attorney's fees and costs).

**§ 5756. Duration of restraining order granted after notice and hearing**

**Comment.** Section 5756 continues former Code of Civil Procedure Section 548 without substantive change.

**PART 6. REGISTRATION AND ENFORCEMENT OF ORDERS****§ 5800. Transmittal to local law enforcement agency**

**Comment.** Section 5800 continues the first sentence of subdivision (a) of former Code of Civil Procedure Section 550 (as amended by 1991 Cal. Stat. ch. 953, § 3) without substantive change. 752. See also Section 70 ("domestic violence" defined). For comparable provisions, see Sections 7740 and 2038.

**§ 5801. Law enforcement agency to make information concerning order available to law enforcement officers**

**Comment.** Section 5801 continues the third sentence of subdivision (a) of former Code of Civil Procedure Section 550 (as amended by 1991 Cal. Stat. ch. 953, § 3) without substantive change. For comparable provisions, see Sections 7741 and 2039. See also Section 70 ("domestic violence" defined).

**§ 5802. Service of restraining order against domestic violence by law enforcement officer**

**Comment.** Subdivisions (a) and (b) of Section 5802 continue the fourth and fifth sentences of subdivision (a) of former Code of Civil Procedure Section 550 (as amended by 1991 Cal. Stat. ch. 953, § 3) without substantive change. Subdivision (c) is the same as subdivision (h) of former Code of Civil Procedure Section 550 (as amended by 1991 Cal. Stat. ch. 953, § 3). For comparable provisions, see Sections 7742 and 2041. See also Section 70 ("domestic violence" defined).

**§ 5803. When personal service not required**

**Comment.** Subdivision (a) of Section 5803 continues subdivision (e) of former Code of Civil Procedure Section 550 (as amended by 1991 Cal. Stat. ch. 953, § 3) without substantive change, but the provision has been made applicable to any restraining order issued pursuant this division. The application of the former provision was unclear. Subdivision (b) of Section 5803 is the same in substance as subdivision (g) of former Code of Civil Procedure Section 550 (as amended by 1991 Cal. Stat. ch. 953, § 3).

**§ 5804. Notice to Department of Justice**

**Comment.** Section 5804 continues subdivisions (b), (c), and (d) of former Code of Civil Procedure Section 550 (as amended by 1991 Cal. Stat. ch. 953, § 3) without substantive change. See also Section 5515.5 (court to provide information to parties concerning terms and effect of order); Penal Code § 12021(g) (criminal penalty for person who acquires firearm knowing that he or she is subject to restraining order against domestic violence).

**§ 5805. Appointment of counsel to represent petitioner in enforcement proceeding; order that respondent pay petitioner's attorney's fees and costs**

**Comment.** Section 5805 continues former Code of Civil Procedure Section 553 without substantive change. "Petitioner" and "respondent" have been substituted for "plaintiff" and "defendant" to conform to the revisions made to the Domestic Violence Prevention Act made by 1990 Cal. Stat. ch. 752. See also Sections 270-275 (general provisions for attorney's fees and costs).

**§ 5806. Clerk to provide petitioner with copies of order**

**Comment.** Section 5806 continues the second sentence of subdivision (a) of former Code of Civil Procedure Section 550 (as amended by 1991 Cal. Stat. ch. 953, § 2) without substantive change.

**§ 5807. Criminal penalty for violation of order**

**Comment.** Section 5807 continues former Code of Civil Procedure Section 551 without substantive change. For comparable provisions, see Sections 7743 and 2042.

COMMENTS TO AB 2650

## DIVISION 11. MINORS

### PART 1. AGE OF MAJORITY

#### § 6500. Minor

**Comment.** The first sentence of Section 6500 continues former Civil Code Section 25 without substantive change. The second sentence continues former Civil Code Section 26 without substantive change. The word "individual" is substituted for "persons." This is not a substantive change. See also Sections 7002 (conditions for emancipation), 7050 (emancipated minor considered over age of majority).

#### § 6501. Adult

**Comment.** Section 6501 continues former Civil Code Section 27 without substantive change. The word "individual" is substituted for "persons." This is not a substantive change. See also Sections 7002 (conditions for emancipation), 7050 (emancipated minor considered over age of majority).

#### § 6502. Transitional provision

**Comment.** Section 6502 continues former Civil Code Section 25.1 without substantive change. The word "individual" is substituted for "persons." This is not a substantive change.

### PART 2. RIGHTS AND LIABILITIES; CIVIL ACTIONS AND PROCEEDINGS

#### § 6600. Civil liability of minor

**Comment.** Section 6600 continues without substantive change the portion of former Civil Code Section 41 that related to minors.

#### § 6601. Enforcement of minor's rights by civil proceeding

**Comment.** Section 6601 continues former Civil Code Section 42 without substantive change. See Code Civ. Proc. § 372 (minor must appear either by a guardian of the estate or by a guardian ad litem). An emancipated minor (see Section 7002) is considered as being over the age of majority for many purposes, including the capacity of the minor to sue and be sued in the minor's own name and the capacity to compromise, settle, arbitrate, or otherwise adjust a claim, action, or proceeding by or against the minor. See Section 7050(e)(4), (5). See also Code Civ. Proc. § 373 (appointment of guardian ad litem to represent interest of minor); Labor Code §§ 5307.5, 5408 (appointment of trustee or guardian ad litem to represent minor in workers' compensation proceeding); Prob. Code §§ 1003 (appointment of guardian ad litem to represent interest of minor in proceeding under Probate Code), 2462 (representation by guardian of estate in actions and proceedings), 2500-2507 (compromise of claims, actions, and proceedings by guardian), 3500, 3600-3603 (compromise by parent of minor's disputed claim).

#### § 6602. Minor's attorney's fees

**Comment.** Section 6602 continues former Probate Code Section 3302 without substantive change. An emancipated minor (see Section 7002) is considered as being over the age of majority for many purposes, including the capacity of the minor to enter into a binding contract, the capacity to sue and be sued in the minor's own name, and the capacity to compromise, settle, arbitrate, or otherwise adjust a claim, action, or proceeding by or against the minor. See Section 7050(e)(2), (4), (5).

## PART 3. CONTRACTS

## CHAPTER 1. CAPACITY TO CONTRACT

**§ 6700 Contractual capacity of minor**

**Comment.** Section 6700 continues the substance of former Civil Code Section 34, omitting the reference to the title on master and servant (which has been repealed). An emancipated minor (see Section 7002) is considered as being over the age of majority for many purposes, including the capacity of the minor to enter into a binding contract. See Section 7050(e)(2).

**§ 6701. Limitation on authority of minor**

**Comment.** Section 6701 continues former Civil Code Section 33 without substantive change. An emancipated minor (see Section 7002) is considered as being over the age of majority for the purpose of making contracts and for many other purposes. See Section 7050.

## CHAPTER 2. DISAFFIRMANCE OF CONTRACTS

**§ 6710. Right of disaffirmance**

**Comment.** Section 6710 continues the substance of former Section 35 with the substitution of the "except as otherwise provided by statute" for the introductory clause of former Section 35 which referred only to specific sections. For exceptions to the right of disaffirmance, see Sections 6711 (contract made under express statutory authority), 6712 (contracts for necessities), 6713 (protection of good faith purchaser), 6751 (contract in arts, entertainment, or professional sports approved by court), 6921 (consent given by minor to medical or dental care). An emancipated minor (see Section 7002) is considered as being over the age of majority for many purposes, including the capacity of the minor to enter into a binding contract. See Section 7050(e)(2).

**§ 6711. Contract made under express statutory authority**

**Comment.** Section 6711 continues former Civil Code Section 37 without substantive change.

**§ 6712. Contracts for necessities**

**Comment.** Section 6712 continues paragraph (1) of subdivision (a) of former Civil Code Section 36 without substantive change. An emancipated minor (see Section 7002) is considered as being over the age of majority for many purposes, including the capacity of the minor to enter into a binding contract. See Section 7050(e)(2).

**§ 6713. Protection of good faith purchaser**

**Comment.** Section 6713 continues former Civil Code Section 35a without substantive change. An emancipated minor (see Section 7002) is considered as being over the age of majority for many purposes, including the capacity of the minor to enter into a binding contract. See Section 7050(e)(2).

## CHAPTER 3. CONTRACTS IN ART, ENTERTAINMENT, AND PROFESSIONAL SPORTS

**§ 6750. Types of contracts governed by this chapter**

**Comment.** Section 6750 continues portions of paragraphs (2) and (3) of subdivision (a) of former Civil Code Section 36 without substantive change. The word "contract" is substituted for the phrase "contract or agreement" which was used in former Civil Code Section 36. This is not a substantive change; as used in Section 6750, "contract" includes "agreement." See also Labor Code § 1700.37 (limitation on minor's right to disaffirm contract with licensed talent agency).

**§ 6751. Contract not subject to disaffirmance if approved by court**

**Comment.** Subdivision (a) of Section 6751 continues the introductory portion of subdivision (a) and portions of paragraphs (2) and (3) of subdivision (a) of former Civil Code Section 36 without substantive change. Subdivisions (b) and (c) continue subdivision (b) of former Civil Code Section



36 without substantive change. The term "contract" includes "agreement." See also Labor Code § 1700.37 (limitation on minor's right to disaffirm contract with licensed talent agency). An emancipated minor (see Section 7002) is considered as being over the age of majority for many purposes, including the capacity of the minor to enter into a binding contract. See Section 7050(e)(2).

**§ 6752. Court order setting aside net earnings for benefit of minor**

**Comment.** Section 6752 continues the substance of former Civil Code Section 36.1 without substantive change.

**§ 6753. Modification or termination of order**

**Comment.** Section 6753 continues former Civil Code Section 36.2 without substantive change.

## PART 4. MEDICAL TREATMENT

### CHAPTER 1. DEFINITIONS

**§ 6900. "Dental care"**

**Comment.** Section 6900 is drawn from and supersedes portions of former Civil Code Sections 25.8 and 34.6.

**§ 6901. "Medical care"**

**Comment.** Section 6901 is drawn from and supersedes portions of former Civil Code Sections 25.8 and 34.6.

**§ 6902. "Parent or guardian"**

**Comment.** Section 6902 is drawn from former Civil Code Section 25.8.

### CHAPTER 2. CONSENT BY PERSON HAVING CARE OF MINOR OR BY COURT

**§ 6910. Parent or guardian may authorize care provider to consent**

**Comment.** Section 6910, together with Sections 6900, 6901, and 6902, continues the substance of former Civil Code Section 25.8. See also Sections 6900 ("dental care" defined), 6901 ("medical care" defined), 6902 ("parent or guardian" defined). As to the power of a guardian to consent to medical treatment, see Probate Code Section 2353. An emancipated minor (see Section 7002) has the capacity to consent to medical, dental, or psychiatric care without parental consent, knowledge, or liability. See Section 7050(e)(1). See also Health & Safety Code § 1530.6 (foster care licensees authorized to give consent to ordinary medical and dental treatment for child).

**§ 6911. Court consent**

**Comment.** Section 6911 continues the substance of former Probate Code Section 3301 insofar as that section related to consent to medical care and adds language to make clear that the section includes dental care. See Section 200 (jurisdiction in superior court). See Sections 6900 ("dental care" defined), 6901 ("medical care" defined), 6902 ("parent or guardian" defined). Section 6911 does not apply if the minor is under the age of 16 years, but in such a case a temporary guardian may be appointed to give consent to medical care or dental care. See Probate Code §§ 2252(b)(1), 2353. An emancipated minor (see Section 7002) has the capacity to consent to medical, dental, or psychiatric care without parental consent, knowledge, or liability. See Section 7050(e)(1).

### CHAPTER 3. CONSENT BY MINOR

**§ 6920. Minor's capacity to consent to medical or dental care without consent of parent or guardian**

**Comment.** Section 6920 generalizes provisions found in former Civil Code Sections 25.6, 25.7, 25.9, 34.5, 34.6, 34.7, 34.8, 34.9, and 34.10. See Section 6902 ("parent or guardian" defined). An

emancipated minor (see Section 7002) has the capacity to consent to medical, dental, or psychiatric care without parental consent, knowledge, or liability. See Section 7050(e)(1). See also Health & Safety Code § 1607.5 (consent to donation of blood by minor).

**§ 6921. Minor's consent not subject to disaffirmance**

**Comment.** Section 6921 generalizes provisions found in former Civil Code Sections 25.6, 25.7, 25.9, 34.5, 34.6, 34.7, 34.8, 34.9, and 34.10.

**§ 6922. Consent by independent minor over 14**

**Comment.** Section 6922, together with Sections 6920 and 6921, continues former Civil Code Section 34.6 without substantive change. See Sections 6900 ("dental care" defined), 6901 ("medical care" defined), 6902 ("parent or guardian" defined). See also Sections 6920 (consent by parent or guardian not necessary), 6921 (consent not subject to disaffirmance). An emancipated minor (see Section 7002) has the capacity to consent to medical, dental, or psychiatric care without parental consent, knowledge, or liability. See Section 7050(e)(1).

**§ 6924. Consent by minor to mental health treatment or counseling**

**Comment.** Section 6924, together with Sections 6920 and 6921, continues the substance of former Civil Code Section 25.9. See Section 6902 ("parent or guardian" defined). See also Sections 6920 (consent by parent or guardian not necessary), 6921 (consent not subject to disaffirmance). An emancipated minor (see Section 7002) has the capacity to consent to medical, dental, or psychiatric care without parental consent, knowledge, or liability. See Section 7050(e)(1).

**§ 6925. Consent by minor to pregnancy treatment**

**Comment.** Section 6925, together with Sections 6920 and 6921, continues former Civil Code Section 34.5 without substantive change. See Sections 6901 ("medical care" defined), 6902 ("parent or guardian" defined). See also Sections 6920 (consent by parent or guardian not necessary), 6921 (consent not subject to disaffirmance). An emancipated minor (see Section 7002) has the capacity to consent to medical care without parental consent, knowledge, or liability. See Section 7050(e)(1).

**§ 6926. Consent by minor to treatment for communicable disease**

**Comment.** Section 6926, together with Sections 6920 and 6921, continues former Civil Code Section 34.7 without substantive change. See Sections 6901 ("medical care" defined), 6902 ("parent or guardian" defined). See also Sections 6920 (consent by parent or guardian not necessary), 6921 (consent not subject to disaffirmance). An emancipated minor (see Section 7002) has the capacity to consent to medical, dental, or psychiatric care without parental consent, knowledge, or liability. See Section 7050(e)(1).

**§ 6927. Consent by rape victim to treatment**

**Comment.** Section 6927, together with Sections 6920 and 6921, continues former Civil Code Section 34.8 without substantive change. See Section 6901 ("medical care" defined). See also Sections 6920 (consent by parent or guardian not necessary), 6921 (consent not subject to disaffirmance). An emancipated minor (see Section 7002) has the capacity to consent to medical, dental, or psychiatric care without parental consent, knowledge, or liability. See Section 7050(e)(1).

**§ 6928. Consent by assault victim to treatment**

**Comment.** Section 6928, together with Sections 6920 and 6921, continues former Civil Code Section 34.9 without substantive change. See Sections 6901 ("medical care" defined), 6902 ("parent or guardian" defined). See also Sections 6920 (consent by parent or guardian not necessary), 6921 (consent not subject to disaffirmance). An emancipated minor (see Section 7002) has the capacity to consent to medical, dental, or psychiatric care without parental consent, knowledge, or liability. See Section 7050(e)(1).

**§ 6929. Consent by minor to drug or alcohol treatment**

**Comment.** Section 6929, together with Sections 6920 and 6921, continues former Civil Code Section 34.10 without substantive change. See Sections 6901 ("medical care" defined), 6902 ("parent or guardian" defined). See also Sections 6920 (consent by parent or guardian not necessary), 6921 (consent not subject to disaffirmance). An emancipated minor (see Section 7002) has the capacity to consent to medical, dental, or psychiatric care without parental consent, knowledge, or liability. See Section 7050(e)(1).

**PART 5. ENLISTMENT IN ARMED FORCES****§ 6950. Court consent**

**Comment.** Section 6950 continues the substance of former Probate Code Section 3301 insofar as that section related to consent for enlistment in the armed services. See also Section 200 (jurisdiction in superior court). The phrase "armed forces of the United States" has been substituted for "armed services" which was used in former Probate Code Section 3301 to conform to the terminology generally used in the California statutes. A person on active duty in any of the armed forces of the United States is an emancipated minor (see Section 7002) and is considered over age of majority for many purposes. See Section 7050 (effect of emancipation).

**PART 6. EMANCIPATION OF MINORS LAW****CHAPTER 1. GENERAL PROVISIONS****§ 7000. Short title**

**Comment.** Section 7000 continues former Civil Code Section 60 with the substitution of "Law" for "Act."

**§ 7001. Purpose and intent**

**Comment.** The first sentence of Section 7001 continues the second sentence of former Civil Code Section 61 without substantive change. The second sentence of Section 7001 continues the substance of a portion of the third sentence of former Civil Code Section 61. Insofar as the third sentence of the former section concerned "minors who are now . . . emancipated," the former provision is omitted as obsolete.

Section 7001 omits the first sentence of former Section 61. This sentence was an obsolete provision describing the state of law in effect prior to the enactment of former Section 61 and the need for the enactment of the former Enforcement of Judgments Act.

**§ 7002. Emancipation**

**Comment.** Section 7002 restates former Civil Code Section 62, but subdivision (a) adopts the language used in Probate Code Section 1515 (no guardian of person for married minor). As to the methods of dissolution of marriage, see Section 722.

Sections 7002 and 7050(e)(1) supersede and continue the substance of former Civil Code Sections 25.6 (furnishing hospital, medical, and surgical care to married minor) and 25.7 (furnishing hospital, medical, and surgical care to minor on active duty with armed services).

**CHAPTER 2. EFFECT OF EMANCIPATION****§ 7050. Emancipated minor considered over age of majority**

**Comment.** Section 7050 continues former Civil Code Section 63 without substantive change. The phrase "or give a delegation of power" is added to paragraph (2) of subdivision (e). This makes clear that subdivision (a) of Section 6701 (limitation on authority of minor) does not limit the powers of an emancipated minor. The words "or imputed liability" are added to subdivision (d), to make the

provision consistent with statutory provisions imposing parental liability that use the language "imputed" liability. See, e.g., Sections 6650 and 6651. See also the Comment to Section 7002 concerning the continuance in Sections 7002 and 7050 of the substance of former Civil Code Sections 25.6 (furnishing hospital, medical, and surgical care to married minor) and 25.7 (furnishing hospital, medical, and surgical care to minor on active duty with armed services).

**§ 7051. Insurance contracts**

**Comment.** Section 7051 continues former Civil Code Section 63.1 without change.

**§ 7052. Stock, memberships, and property**

**Comment.** Section 7052 continues former Civil Code Section 63.2 without substantive change.

**CHAPTER 3. COURT DECLARATION OF EMANCIPATION**

**Article 1. General Provisions**

**§ 7110. Legislative intent**

**Comment.** Section 7110 continues former Civil Code Section 70 without substantive change except that Section 7110 applies to all proceedings under this chapter. The former provision did not cover a proceeding to void a declaration of emancipation obtained by fraud or withholding material information.

**§ 7111. Effect of declaration on benefits**

**Comment.** Section 7111 continues former Civil Code Section 67 without change.

**Article 2. Procedure for Declaration**

**§ 7120. Petition**

**Comment.** Section 7120 continues subdivision (a) of former Civil Code Section 64 without substantive change. See also Section 212 (verification of pleadings).

**§ 7121. Notice**

**Comment.** Section 7121 continues subdivision (b) of former Section 64 without substantive change.

**§ 7122. Issuance of declaration of emancipation**

**Comment.** Section 7122 continues subdivision (c), the first sentence of subdivision (d), and subdivision (g) of former Civil Code Section 64 without substantive change.

**§ 7123. Writ of mandate**

**Comment.** Section 7123 continues subdivisions (e) and (f) of former Civil Code Section 64 without substantive change.

**Article 3. Voiding or Rescinding Declaration**

**§ 7130. Grounds for voiding or rescinding**

**Comment.** Subdivision (a) of Section 7130 continues the first sentence of former Civil Code Section 69 without substantive change. Subdivision (b) continues subdivision (c) of former Civil Code Section 65 without substantive change.

**§ 7131. Petition to void declaration**

**Comment.** The first sentence of Section 7131 continues the third sentence of former Civil Code Section 69 without substantive change and adds the portion specifying the ground on which the petition is based which is drawn from the first sentence of former Civil Code Section 69. The second sentence is new.

**§ 7132. Petition to rescind declaration**

**Comment.** Section 7132 continues subdivision (a) of former Civil Code Section 65 without substantive change and adds the portion specifying the ground on which the petition is based which is drawn from subdivision (c) of former Civil Code Section 65. See also Section 200 (jurisdiction in superior court). Section 7132 also makes clear that a petition filed by the conservator may be filed in either in the county where the minor resides or in the county where the conservator resides.

**§ 7133. Notice**

**Comment.** Section 7133 continues subdivision (b) of former Civil Code Section 65 and a portion of the fourth sentence of former Civil Code Section 69 without substantive change.

**§ 7134. Court order**

**Comment.** Section 7134 continues the first sentence of subdivision (d) of former Civil Code Section 65 and a portion of the fourth sentence of former Civil Code Section 69.

**§ 7135. Effect of voiding or rescission on contract and property rights**

**Comment.** Section 7135 continues subdivision (e) of former Civil Code Section 65 and the second sentence of former Civil Code Section 69 without substantive change.

**Article 4. Identification Cards and Information****§ 7140. Department of Motor Vehicles records system and identification cards**

**Comment.** Section 7140 continues the second sentence of subdivision (d) of former Civil Code Section 64 without substantive change.

**§ 7141. Good faith reliance on identification card**

**Comment.** Section 7141 continues former Civil Code Section 66 without substantive change.

**§ 7142. Protection of public entities and public employees**

**Comment.** Section 7142 continues former Civil Code Section 68 without substantive change.

**§ 7143. Notice of Department of Motor Vehicles if declaration voided or rescinded**

**Comment.** Section 7143 continues the second and third sentences of subdivision (d) of former Civil Code Section 65 and a portion of the fourth sentence of former Civil Code Section 69 without substantive change.

COMMENTS TO AB 2650

**DIVISION 12. PARENT AND CHILD RELATIONSHIP**

**PART 1. ISSUE OF WIFE COHABITING WITH HER HUSBAND**

**§ 7500. Conclusive presumption concerning child of marriage**

**Comment.** Section 7500 continues subdivision (a) of former Evidence Code Section 621 without substantive change.

**§ 7501. Use of blood tests to determine paternity**

**Comment.** Section 7501 restates without substantive change subdivisions (b) to (h), inclusive, of former Evidence Code Section 621. The provision of former Section 621 that made what is now subdivision (d) of Section 7501 not applicable to a case pending before the court on September 30, 1980, has been omitted as obsolete.

**PART 2. BLOOD TESTS TO DETERMINE PATERNITY**

**§ 7550. Short title**

**Comment.** Section 7550 continues former Evidence Code Section 890 without substantive change. Section 7550 is similar to Section 9 of the Uniform Act on Blood Tests to Determine Paternity (1952). See also Sections 3 (construction of provisions drawn from uniform acts), 13 (severability of provisions).

**§ 7551. Order for blood tests in civil proceeding involving paternity**

**Comment.** Section 7551 continues former Evidence Code Section 892 without substantive change. The reference to "proceeding" has been added following the words "civil action." This addition continues the effect of Section 120 of the Evidence Code insofar as it applied to former Evidence Code Section 892. Section 7551 is similar to Section 1 of the Uniform Act on Blood Tests to Determine Paternity (1952).

**§ 7552. Tests made by experts**

**Comment.** Section 7552 continues former Evidence Code Section 893. Section 7552 is the same as Section 2 of the Uniform Act on Blood Tests to Determine Paternity (1952).

**§ 7553. Compensation of experts**

**Comment.** Section 7553 continues former Evidence Code Section 894. Section 7553 is similar to the first three sentences of Section 3 of the Uniform Act on Blood Tests to Determine Paternity (1952).

**§ 7554. Effect of test results**

**Comment.** Section 7554 continues former Evidence Code Section 895. Section 7554 is similar to Section 4 of the Uniform Act on Blood Tests to Determine Paternity (1952).

**§ 7555. Rebuttable presumption of paternity; paternity index of 100 or more**

**Comment.** Section 7555 continues former Evidence Code Section 895.5.

**§ 7556. Limitation on application in criminal matters**

**Comment.** Section 7556 continues former Evidence Code Section 896 without substantive change. Section 7556 is similar to Section 6 of the Uniform Act on Blood Tests to Determine Paternity (1952).

**§ 7557. Right to produce other expert evidence**

**Comment.** Section 7557 continues former Evidence Code Section 897 without substantive change. The last portion of Section 7557 is similar to the last sentence of Section 3 of the Uniform Act on Blood Tests to Determine Paternity (1952).

## PART 3. UNIFORM PARENTAGE ACT

## CHAPTER 1. GENERAL PROVISIONS

**§ 7600. Short title**

**Comment.** Section 7600 continues former Civil Code Section 7000 without substantive change. Section 7600 is similar to Section 27 of the Uniform Parentage Act (1973). See also Sections 3 (construction of provisions drawn from uniform acts), 13 (severability of provisions).

**§ 7601. "Parent and child relationship" defined**

**Comment.** Section 7601 continues former Civil Code Section 7001 without substantive change. Section 7601 is the same in substance as Section 1 of the Uniform Parentage Act (1973). Compare Code Civ. Proc. § 377 (right to maintain wrongful death action).

**§ 7602. Relationship not dependent on marriage**

**Comment.** Section 7602 is the same as former Civil Code Section 7002. Section 7602 is the same as Section 2 of the Uniform Parentage Act (1973).

**§ 7603. Check to determine if child is missing person**

**Comment.** Section 7603 continues former Civil Code Section 7017.6 without substantive change. No comparable provision is found in the Uniform Parentage Act (1973).

**§ 7604. Pendente lite relief of custody or grant of visitation rights**

**Comment.** Section 7604 continues former Civil Code Section 7004.5 (as amended by 1991 Cal. Stat. ch. 321, § 2) without substantive change. The reference found in former Section 7004.5 to former Civil Code Section 4600 has been replaced in Section 7604 by a reference to the portion of former Section 4600 that authorized the court to make a custody order during the pendency of a proceeding where there is at issue the custody of a minor child. Mediation of the custody or visitation issue is required by Chapter 11 (commencing with Section 3155) of Part 2 of Division 8. See also Sections 75 ("domestic violence prevention order" defined), 215 (factors to be considered in determining best interest of child), 3131 (action by district attorney where child taken or detained in violation of visitation order), 3044 (parent convicted under certain Penal Code provisions not to be allowed unsupervised visitation with child); Code Civ. Proc. § 917.7 (order not automatically stayed by appeal). For provisions comparable to subdivision (b) of Section 7604, see Sections 3100(b) and 5513. No provision comparable to Section 7604 is found in the Uniform Parentage Act (1973).

## CHAPTER 2. ESTABLISHING PARENT AND CHILD RELATIONSHIP

**§ 7610. Methods of establishing**

**Comment.** Section 7610 is the same as former Civil Code Section 7003. Section 7610 is the same in substance as Section 3 of the Uniform Parentage Act (1973), except that Section 7610 omits the Uniform Act reference to the Revised Uniform Adoption Act.

**§ 7611. Presumption of paternity**

**Comment.** Section 7611 continues subdivision (a) of former Civil Code Section 7004 without substantive change. "Judgment" has been substituted for "decree" in subdivision (a). Section 7611 is the same in substance as subsection (a) of Section 4 of the Uniform Parentage Act (1973) with some additions and omissions. As to the nature of the presumption created, see Section 7612.

**§ 7612. Nature of paternity presumptions**

**Comment.** Section 7612 continues subdivision (b) of former Civil Code Section 7004 without substantive change. "Judgment" has been substituted for "decree" in subdivision (c). Section 7612 is similar to subsection (b) of Section 4 of the Uniform Parentage Act (1973).



**§ 7613. Artificial insemination**

**Comment.** Section 7613 is the same as former Civil Code Section 7005. Section 7613 is similar to Section 5 of the Uniform Parentage Act (1973).

**§ 7614. Promise to furnish support**

**Comment.** Section 7614 continues without change former Civil Code Section 7016, but the former reference to subdivision (d) of former Section 7006 (which should have been a reference to subdivision (e) of former Section 7006) has been corrected to refer to what is now Section 7632. Section 7614 is the same in substance as Section 22 of the Uniform Parentage Act (1973).

## CHAPTER 3. JURISDICTION AND VENUE

**§ 7620. Jurisdiction; venue**

**Comment.** Section 7620 is the same as subdivisions (b) and (c) of former Civil Code Section 7007. Section 7620 is the same in substance as portions of Section 8 of the Uniform Parentage Act (1973). See Section 200 (jurisdiction in superior court); former Civil Code Section 7007(a).

## CHAPTER 4. DETERMINATION OF PARENT AND CHILD RELATIONSHIP

## Article 1. Determination of Father and Child Relationship

**§ 7630. Persons who may bring action; when action may be brought**

**Comment.** Section 7630 continues subdivisions (a), (b), and (c) of former Civil Code Section 7006 without substantive change. Section 7630 is similar to subsections (a), (b), and (c) of Section 6 of the Uniform Parentage Act (1973).

**§ 7631. Action by man not a presumed father to establish that he is natural father of child**

**Comment.** Section 7631 continues subdivision (d) of former Civil Code Section 7006 without substantive change. No comparable provision is found in the Uniform Parentage Act (1973).

**§ 7632. Agreement between alleged father or mother or child does not bar action**

**Comment.** Section 7632 is the same as subdivision (e) of former Civil Code Section 7006. Section 7632 is similar to subsection (d) of Section 6 of the Uniform Parentage Act (1973).

**§ 7633. Action before birth of child**

**Comment.** Section 7633 is the same as subdivision (f) of former Civil Code Section 7006. Section 7633 is a substitute for subsection (e) of Section 6 of the Uniform Parentage Act (1973).

**§ 7634. Action by district attorney**

**Comment.** Section 7634 is the same as subdivision (g) of former Civil Code Section 7006. No comparable provision is found in the Uniform Parentage Act (1973).

**§ 7635. Parties**

**Comment.** Section 7635 is the same as former Civil Code Section 7008. Section 7635 is similar to Section 9 of the Uniform Parentage Act (1973).

**§ 7636. Effect of judgment determining existence or nonexistence of parent and child relationship**

**Comment.** Section 7636 is the same as subdivision (a) of former Civil Code Section 7010 (as amended and added by 1990 Cal. Stat. ch. 1493, §§ 29, 30). Section 7636 is similar to subsection (a) of Section 15 of the Uniform Parentage Act (1973).

**§ 7637. Other provisions of judgment**

**Comment.** Subdivision (a) of Section 7637 is the same as paragraph (1) of subdivision (c) of former Civil Code Section 7010 (as amended by 1990 Cal. Stat. ch. 1493, § 29). Subdivision (a) of

Section 7637 is the same as subsection (c) of Section 15 of the Uniform Parentage Act (1973). Subdivision (b) of Section 7637 continues the substantive effect of paragraphs (2) and (3) of subdivision (c) of former Civil Code Section 7010. The substance of those paragraphs is continued in the provisions of Division 9 which are incorporated by reference in subdivision (b) of Section 7637. Subdivision (c) of Section 7637 is the same as subdivision (d) of former Civil Code Section 7010. The "sunset provision" found in subdivision (e) of former Civil Code Section 7010 (as amended by 1990 Cal. Stat. ch. 1493, § 29) has not been continued. The "sunset provision" provided in effect that the material set out in subdivision (b) and paragraphs (1) to (5), inclusive, of subdivision (c) of Section 7637 is deleted as of January 1, 1993, unless a later enacted statute, which is enacted before January 1, 1993, deletes or extends the January 1, 1993, expiration date.

**§ 7638. Change of name of child**

**Comment.** Section 7638 is the same in substance as subdivision (d) of former Civil Code Section 7007. See Section 200 (jurisdiction in superior court). No comparable provision is found in the Uniform Parentage Act (1973). See also Section 7639 (issuance of new birth certificate).

**§ 7639. Issuance of new birth certificate**

**Comment.** Section 7639 is the same as subdivision (b) of former Civil Code Section 7010 (as amended and added by 1990 Cal. Stat. ch. 1493, §§ 29, 30). Section 7639 is similar to subsection (b) of Section 15 of the Uniform Parentage Act (1973). See also Section 7638 (jurisdiction and proceedings to change name of child).

**§ 7640. Award of attorney's fees and other costs**

**Comment.** Section 7640 is the same as former Civil Code Section 7011. Section 7640 is the same as the first sentence of Section 16 of the Uniform Parentage Act (1973). For general provisions relating to award of attorney's fees and costs, see Sections 270-275.

**§ 7641. Enforcement of judgment**

**Comment.** Section 7641 continues former Civil Code Section 7012 without substantive change. Section 7641 is the same in substance as Section 17 of the Uniform Parentage Act (1973).

**§ 7642. Modification of judgment**

**Comment.** Section 7642 continues former Civil Code Section 7013 without substantive change. Section 7642 is similar to Section 18 of the Uniform Parentage Act (1973).

**§ 7643. Confidentiality of hearings and records**

**Comment.** Section 7643 is the same as former Civil Code Section 7014. Section 7643 is similar to Section 20 of the Uniform Parentage Act (1973).

**Article 2. Determination of Mother and Child Relationship**

**§ 7650. Action to determine mother and child relationship**

**Comment.** Section 7650 continues former Civil Code Section 7015 without substantive change. Section 7650 is the same in substance as Section 21 of the Uniform Parentage Act (1973).

**CHAPTER 5. TERMINATION OF PARENTAL RIGHTS IN ADOPTION PROCEEDINGS**

**§ 7660. Relinquishment or consent by mother; notice to and rights of presumed father or father as to whom child is a legitimate child**

**Comment.** Section 7660 is the same as subdivision (a)(1) of former Civil Code Section 7017 without substantive change. Section 7660 is similar to Section 24 of the Uniform Parentage Act (1973). The words "the law" have been substituted for "prior law" in the introductory portion of Section 7660.

**§ 7661. Relinquishment or consent by father; notice to and rights of mother**

**Comment.** Section 7661 continues subdivision (a)(2) of former Civil Code Section 7017 without substantive change. No comparable provision is found in the Uniform Parentage Act (1973).

**§ 7662. Proceeding to terminate parental rights of father**

**Comment.** Section 7662 continues subdivision (b) of former Civil Code Section 7017 without substantive change. See also Section 200 (jurisdiction in superior court). The words "the law" have been substituted for "prior law" in clause (2) of the introductory portion of Section 7662. Section 7662 replaces subsection (a) of Section 25 of the Uniform Parentage Act (1973).

**§ 7663. Effort to identify natural father**

**Comment.** Section 7663 continues subdivision (c) of former Civil Code Section 7017 without substantive change. Section 7663 is similar to subsection (b) of Section 25 of the Uniform Parentage Act (1973).

**§ 7664. Notice to man identified as possible natural father; determination and order concerning his parental rights**

**Comment.** Section 7664 is the same as subdivision (d) of former Civil Code Section 7017. Section 7664 replaces subsection (c) of Section 25 of the Uniform Parentage Act (1973).

**§ 7665. Order terminating parental rights of unknown natural father**

**Comment.** Section 7665 is the same as subdivision (e) of former Civil Code Section 7017. Section 7665 is the same as the first sentence of subsection (d) of Section 25 of the Uniform Parentage Act (1973).

**§ 7666. Manner of giving notice; order dispensing with notice**

**Comment.** Section 7666 is the same as subdivision (f) of former Civil Code Section 7017. Section 7666 is similar to subsection (e) of Section 25 of the Uniform Parentage Act (1973).

**§ 7667. Setting for hearing; preference for trial**

**Comment.** Section 7667 is the same as subdivision (a) and the first sentence of subdivision (b) of former Civil Code Section 7017.2. No comparable provision is found in the Uniform Parentage Act (1973).

**§ 7668. Continuance of hearing**

**Comment.** Section 7668 continues the second sentence of subdivision (b) and subdivision (c) of former Civil Code Section 7017.2 without substantive change. No comparable provision is found in the Uniform Parentage Act (1973).

**§ 7669. Appeal from order requiring or dispensing with father's consent**

**Comment.** Section 7669 is the same as subdivision (g) of former Civil Code Section 7017. Section 7669 replaces the second sentence of subdivision (d) of Section 25 of the Uniform Parentage Act (1973).

**§ 7670. No filing fee**

**Comment.** Section 7670 is the same as former Civil Code Section 7017.1. No comparable provision is found in the Uniform Parentage Act (1973).

## CHAPTER 6. PROTECTIVE AND TEMPORARY CUSTODY ORDERS

## Article 1. Orders in Summons

**§ 7700. Temporary restraining order in summons**

**Comment.** Section 7700 continues the first sentence and the last portion of the second sentence of subdivision (b) of former Code of Civil Procedure Section 412.21 without substantive change. For

general provisions governing a restraining order in a summons, see Part 3 (commencing with Section 231) of Division 2.

#### Article 2. Ex Parte Orders

##### § 7710. Ex parte protective and temporary custody orders

**Comment.** Section 7710 continues the first sentence of subdivision (a) of former Civil Code Section 7020 with the addition of "telephoning" in subdivision (a). See also Section 200 (jurisdiction in superior court). No comparable provision is found in the Uniform Parentage Act (1973). As to when notice to the other party is required, see Section 241. As to the order to show cause and hearing thereon, see Sections 242-244. See also Section 7721 (order after notice and a hearing excluding one party from dwelling upon a showing only that physical or emotional harm would otherwise result to the other party or the minor child).

##### § 7711. Limitation on issuance of mutual restraining order

**Comment.** Section 7711 is the same as subdivision (f) of former Civil Code Section 7020. No comparable provision is found in the Uniform Parentage Act (1973). See also Sections 55 ("abuse" defined), 70 ("domestic violence" defined). For comparable provisions, see Sections 2036, 5514.

#### Article 3. Orders Issuable After Notice and Hearing

##### § 7720. Protective, temporary custody, and restitution orders

**Comment.** Subdivision (a) of Section 7720 is the same as the first sentence of subdivision (b) of former Civil Code Section 7020. No comparable provision is found in the Uniform Parentage Act (1973).

Subdivisions (b) and (c) are the same as the same as the fourth and fifth sentences of subdivision (b) of former Civil Code Section 7020. No comparable provision is found in the Uniform Parentage Act (1973). See also Section 55 ("abuse" defined).

##### § 7721. Order excluding party from dwelling upon a showing only that physical or emotional harm would otherwise result

**Comment.** Section 7721 is the same as the second sentence of subdivision (b) of former Civil Code Section 7020. No comparable provision is found in the Uniform Parentage Act (1973).

##### § 7722. Duration of restraining order granted after notice and hearing

**Comment.** Section 7722 is the same as the third sentence of subdivision (b) of former Civil Code Section 7020. No comparable provision is found in the Uniform Parentage Act (1973).

#### Article 4. Required Statements in Order

##### § 7730. Statement of date of expiration

**Comment.** Section 7730 continues subdivision (c) of former Civil Code Section 7020 without substantive change. No comparable provision is found in the Uniform Parentage Act (1973). For a comparable provision, see Section 2037(a).

##### § 7731. Notice to defendant in temporary restraining order

**Comment.** Section 7731 continues subdivision (d) of former Civil Code Section 7020 without substantive change. No comparable provision is found in the Uniform Parentage Act (1973). For a comparable provision, see Section 2037(b).

## Article 5. Registration and Enforcement of Orders

**§ 7740. Transmittal to local law enforcement agency**

**Comment.** Section 7740 is the same as the first sentence of subdivision (e) of former Civil Code Section 7020. No comparable provision is found in the Uniform Parentage Act (1973). See also Section 70 ("domestic violence" defined). For comparable provisions, see Sections 2038, 5800.

**§ 7741. Law enforcement agency to make information concerning order available to law enforcement officers**

**Comment.** Section 7741 is the same as the second sentence of subdivision (e) of former Civil Code Section 7020. No comparable provision is found in the Uniform Parentage Act (1973). See also Section 70 ("domestic violence" defined). For comparable provisions, see Sections 2039, 5801.

**§ 7742. Service of restraining order against domestic violence by law enforcement officer**

**Comment.** Section 7742 continues subdivision (g) of former Civil Code Section 7020 without substantive change. The word "plaintiff" has been substituted for "moving party" and the word "defendant" has been substituted for "responding party" to conform Section 7742 to the terminology used in the remainder of the provisions of this chapter. No comparable provision is found in the Uniform Parentage Act (1973). See also Section 70 ("domestic violence" defined). For comparable provisions, see Sections 2041, 5802.

**§ 7743. Criminal penalty for violation of order**

**Comment.** Section 7743 is the same as subdivision (h) of former Civil Code Section 7020. No comparable provision is found in the Uniform Parentage Act (1973). For comparable provisions, see Sections 2042, 5807.

## Article 6. Protective Orders Included in Judgment

**§ 7750. Protective orders included in judgment entered under this part**

**Comment.** Section 7750 is the same as former Civil Code Section 7021, but the former reference to subdivision (d) of former Section 7006 (which should have been a reference to subdivision (e) of former Section 7006) has been corrected to refer to what is now Section 7740. No comparable provision is found in the Uniform Parentage Act (1973). For a comparable provision, see Section 2045.

## PART 4. FREEDOM FROM PARENTAL CUSTODY AND CONTROL

## CHAPTER 1. GENERAL PROVISIONS

**§ 7800. Purpose of part**

**Comment.** Section 7800 continues the first sentence of former Civil Code Section 232.6 without substantive change. See also Section 215 (factors to be considered in determining best interest of child).

**§ 7801. Liberal construction**

**Comment.** Section 7801 continues the first sentence of former Civil Code Section 232.5 without substantive change.

**§ 7802. Proceeding to declare minor free from parental custody and control**

**Comment.** Section 7802 continues a portion of the introductory portion of subdivision (a) of former Civil Code Section 232 without substantive change. See also Section 7820.

The proceeding under this part is designated as a "proceeding" rather than as "an action." Under former law, the proceeding was generally referred to as an "action."

The word "child" is used consistently in this part. Formerly, the word "child" and "minor" were used interchangeably. Nevertheless, only a minor child (one under 18 years of age) can be declared free from the custody and control of either or both of his or her parents. See Sections 7802 and 7820.

**§ 7803. Effect of declaration**

**Comment.** Section 7803 continues the second sentence of former Civil Code Section 232.6 without substantive change.

**§ 7804. Appointment of person to act on child's behalf; further notice**

**Comment.** Section 7804 continues the substance of former Civil Code Section 237.

**§ 7805. Persons entitled to inspect petitions, reports, and records**

**Comment.** Subdivisions (a) and (b) of Section 7805 continue former Civil Code Section 233.5 without substantive change. Subdivision (c) continues former Civil Code Section 233.6 without substantive change. See also Section 200 (jurisdiction in superior court).

**§ 7806. No filing fee**

**Comment.** Section 7806 continues the second sentence of former Civil Code Section 233 without substantive change.

**§ 7807. Nonapplication of certain other statutory provisions in proceeding under this part**

**Comment.** Section 7807 continues subdivision (d) of former Civil Code Section 232 without substantive change.

**§ 7808. Child adjudged to be dependent child after January 1, 1989**

**Comment.** Section 7808 continues subdivision (e) of former Civil Code Section 232 without substantive change.

**CHAPTER 2. CIRCUMSTANCES WHERE PROCEEDING MAY BE BROUGHT**

**§ 7820. Proceeding to declare minor free from parental custody and control**

**Comment.** Section 7820 continues a portion of the introductory portion of subdivision (a) of former Civil Code Section 232 without substantive change. This section limits a proceeding under this chapter to case where the child (1) is under the age of 18 and (2) comes within any of the descriptions set out in this chapter.

**§ 7821. Clear and convincing evidence**

**Comment.** Section 7821 is the same as a portion of subdivision (c) of former Civil Code Section 232.

**§ 7822. Abandoned child**

**Comment.** Section 7822 continues subdivision (a)(1) of former Civil Code Section 232 (as amended by 1991 Cal. Stat. ch. 372, § 2) without substantive change.

**§ 7823. Neglected or cruelly treated child**

**Comment.** Section 7823 continues subdivision (a)(2) of former Civil Code Section 232 without substantive change.

**§ 7824. Child whose parents under disability because of use of alcohol or controlled substance or being morally depraved**

**Comment.** Section 7824 continues subdivision (a)(3) of former Civil Code Section 232 without substantive change.

**§ 7825. Child whose parent convicted of felony**

**Comment.** Section 7825 continues subdivision (a)(4) of former Civil Code Section 232 without substantive change.

**§ 7826. Child whose parent declared to be developmentally disabled or mentally ill**

**Comment.** Section 7826 continues subdivision (a)(5) of former Civil Code Section 232 without substantive change.

**§ 7827. Child whose parent is mentally disabled**

**Comment.** Section 7827 continues subdivision (a)(6) of former Civil Code Section 232 without substantive change.

**§ 7828. Child in supervised out-of-home placement for one year period**

**Comment.** Section 7828 continues subdivision (a)(7) of former Civil Code Section 232 without substantive change.

**§ 7829. Child found to be dependent child and reunification services not to be provided**

**Comment.** Section 7829 continues subdivision (a)(8) of former Civil Code Section 232 without substantive change.

**CHAPTER 3. PROCEDURE****Article 1. Authorized Petitioners****§ 7840. Petition by private or public adoption agency or state or county agency**

**Comment.** Section 7840 is the same in substance as former Civil Code Section 232.9. See also Section 212 (verification of pleadings). See also Section 7841 (any interested person may file petition).

**§ 7841. Right of interested person to file petition**

**Comment.** Section 7841 is the same in substance as a portion of the first sentence of former Civil Code Section 233.

**Article 2. Venue****§ 7845. Venue**

**Comment.** Section 7845 is the same as a portion of the first sentence of former Civil Code Section 233. See also Section 200 (jurisdiction in superior court).

**Article 3. Investigation and Report****§ 7850. Investigation of circumstances of child**

**Comment.** Section 7850 continues the third sentence of former Civil Code Section 233 without substantive change. Section 7850 does not require the notice and investigation if the petition is filed under Section 7840 (petition by licensed private or public adoption agency or state or county agency).

**§ 7851. Report and recommendations to court**

**Comment.** Section 7851 is the same as the last portion of former Civil Code Section 233. See also Section 215 (factors to be considered in determining best interest of child).

**Article 4. Appointment of Counsel****§ 7860. Procedure for appointment of counsel**

**Comment.** Section 7860 continues the introductory portion, the second sentence of subdivision (b), and the first sentence of subdivision (c) of former Civil Code Section 237.5 without substantive change. See also Sections 7827(e) (mandatory appointment of counsel for mentally disabled parent), 7895 (appointment of counsel for indigent appellant).

**§ 7861. Appointment to protect interests of child**

**Comment.** Section 7861 continues subdivision (a) of former Civil Code Section 237.5 without substantive change. The section has been reworded to make it more concise.

**§ 7862. Appointment of counsel for parent**

**Comment.** Section 7862 continues the first sentence of subdivision (b) of former Civil Code Section 237.5 without substantive change.

**§ 7863. Compensation and expenses of private appointed counsel**

**Comment.** Section 7863 continues the second, third, and fourth sentences of subdivision (c) of former Civil Code Section 237.5 without substantive change.

**§ 7864. Continuance**

**Comment.** Section 7864 continues subdivision (d) of former Civil Code Section 237.5 without substantive change. For a general provision on continuances, see Section 7871.

**Article 5. Time for Hearing; Continuance****§ 7870. Time for hearing; precedence over other matters; continuance**

**Comment.** Section 7870 continues subdivisions (a) and (b) of former Civil Code Section 232.3 with the addition of a reference in subdivision (c) to Section 7871.

**§ 7871. Continuance of hearing**

**Comment.** Section 7871 continues subdivision (c) of former Civil Code Section 232.3 without substantive change. See also Section 7864 (continuance for not to exceed 30 days as necessary to appoint counsel and to enable counsel to become acquainted with the case).

**Article 6. Notice of Proceeding and Attendance at Hearing****§ 7880. Citation requiring attendance at hearing**

**Comment.** Section 7880 continues the first paragraph of former Civil Code Section 234 without substantive change. The requirement that service "be made in the manner prescribed by law for service of civil process" is drawn from the last portion of subdivision (b) of former Civil Code Section 232.3.

**§ 7881. Service of citation on parents or relatives**

**Comment.** Section 7881 continues subdivision (a) of former Civil Code Section 235 without substantive change.

**§ 7882. Service on parent who cannot be found or whose residence is unknown**

**Comment.** Section 7882 continues subdivision (b) of former Civil Code Section 235 without substantive change.

**§ 7883. Failure to comply with citation as contempt**

**Comment.** Section 7883 continues former Civil Code Section 236 without substantive change. A reference to Section 7880 has been added to make clear that the section applies only when a person is served as provided in that section. A person served with a citation under Section 7881 may, but is not required, to attend the hearing.

**§ 7884. Admission of public to proceeding**

**Comment.** Section 7884 continues former Civil Code Section 235.5 without substantive change.

**Article 7. Hearing and Subsequent Proceedings****§ 7890. Wishes and best interest of child**

**Comment.** Section 7890 continues the substance of the second sentence of former Civil Code Section 232.5 and supersedes the first sentence of subdivision (b) of former Civil Code Section 232. See also Section 215 (factors to be considered in determining best interest of child).



**§ 7891. Hearing in chambers to determine wishes of child**

**Comment.** Section 7891 is the same as the second paragraph of former Civil Code Section 234. See also Section 7954 (minor's right to make statement in connection with priorities for foster care placement).

**§ 7892. Testimony of child in chambers**

**Comment.** Subdivisions (a), (b), and (d) of Section 7892 continue the last portion of subdivision (b) of former Civil Code Section 232 without substantive change. Subdivision (c) continues a portion of subdivision (c) of former Civil Code Section 232.

**§ 7893. Appointment of guardian or referral for adoption**

**Comment.** Section 7893 continues former Civil Code Section 239 without substantive change. See also Section 215 (factors to be considered in determining best interest of child).

**§ 7894. Conclusiveness of order or judgment**

**Comment.** Section 7894 continues former Civil Code Section 238 without substantive change. See also Code Civ. Proc. § 45 (precedence for appeal from judgment freeing dependent child from parental custody and control).

**§ 7895. Appointment of counsel for indigent appellant; free copy of transcripts**

**Comment.** Section 7895 continues former Civil Code Section 237.7 without substantive change. See also Code Civ. Proc. § 45 (precedence for appeal from judgment freeing dependent child from parental custody and control).

**PART 5. INTERSTATE COMPACT ON PLACEMENT OF CHILDREN****§ 7900. Adoption of compact**

**Comment.** Section 7900 is the same as former Civil Code Section 264.

**§ 7901. Provisions of compact**

**Comment.** Section 7901 is the same as former Civil Code Section 265. See also Section 215 (factors to be considered in determining best interest of child).

**§ 7902. Financial responsibility for child placed pursuant to compact**

**Comment.** Section 7902 is the same as former Civil Code Section 266.

**§ 7903. "Appropriate public authorities" defined**

**Comment.** Section 7903 continues former Civil Code Section 267 without substantive change.

**§ 7904. "Appropriate authority in receiving state" defined**

**Comment.** Section 7904 is the same as former Civil Code Section 268.

**§ 7905. Agreements with party states; approval of financial obligations**

**Comment.** Section 7905 is the same as former Civil Code Section 269.

**§ 7906. Requirements for visitation, inspection, or supervision in another state**

**Comment.** Section 7906 continues former Civil Code Section 270 without substantive change.

**§ 7907. Application of law restricting out-of-state placements**

**Comment.** Section 7907 is the same as former Civil Code Section 271.

**§ 7908. Placement of delinquent children in institution in another state**

**Comment.** Section 7908 continues former Civil Code Section 272 without substantive change.

**§ 7909. Appointment of compact administrator**

**Comment.** Section 7909 continues former Civil Code Section 273 without substantive change.

- § 7910. Refusal to grant approval of placement in violation of state law**  
**Comment.** Section 7910 is the same as former Civil Code Section 274.

**PART 6. PRIORITIES FOR FOSTER CARE PLACEMENT**

- § 7950. Order of placement preference**

**Comment.** Section 7950 continues former Civil Code Section 275 without substantive change. See also Section 215 (factors to be considered in determining best interest of child).

- § 7951. Considerations constituting good cause not to follow rules**

**Comment.** Section 7951 continues former Civil Code Section 275.1 without substantive change.

- § 7952. Records showing diligent search conducted**

**Comment.** Section 7952 continues former Civil Code Section 275.2 without substantive change.

- § 7953. Placing child for period not intended to exceed 30 days**

**Comment.** Section 7953 continues former Civil Code Section 275.3 without substantive change.

- § 7954. Minor's right to make statement**

**Comment.** Section 7954 continues former Civil Code Section 275.4 without substantive change.

## DIVISION 13. ADOPTION

## PART 1. DEFINITIONS

**§ 8500. Applicability of part**

**Comment.** Section 8500 is new and is comparable to Section 50. Section 8500 supersedes the introductory clause of former Civil Code Section 220.20. The definitions in this part have been made applicable to both minor adoptions governed by Part 2 and adult adoptions governed by Part 3.

**§ 8503. "Adoptive parent"**

**Comment.** Section 8503 supersedes subdivision (a) of former Civil Code Section 220.20. The definition has been broadened to apply to adoptions of minors and adults. The reference in the former law to petitioning for an adoption order and the reference to final decrees of adoption are omitted as surplus. The reference to children is also omitted as surplus. See Section 10 (singular includes plural).

**§ 8506. "Agency adoption"**

**Comment.** Section 8506 continues subdivision (b) of former Civil Code Section 220.20 without substantive change. The defined term "licensed adoption agency" is used instead of the former reference to "an agency licensed by the department." For provisions relating to agency adoptions, see Chapter 2 (commencing with Section 8700) of Part 2.

See also Sections 8518 ("department" defined), 8527 ("intercountry adoption" defined), 8530 ("licensed adoption agency" defined).

**§ 8509. "Applicant"**

**Comment.** Section 8509 continues subdivision (c) of former Civil Code Section 220.20 without change. See also Sections 8518 ("department" defined), 8530 ("licensed adoption agency" defined).

**§ 8512. "Birth parent"**

**Comment.** Section 8512 continues subdivision (d) of former Civil Code Section 220.20 without substantive change. "Person" is used in place of "child" since this definition applies to Part 3 (commencing with Section 9300) concerning adult adoptions. See also Section 8503 ("adoptive parent" defined).

**§ 8515. "Delegated county adoption agency"**

**Comment.** Section 8515 continues subdivision (f) of former Civil Code Section 220.20 without substantive change. See also Section 8530 ("licensed adoption agency" defined).

**§ 8518. "Department"**

**Comment.** Section 8518 continues subdivision (g) of former Civil Code Section 220.20 without change.

**§ 8521. "Full-service adoption agency"**

**Comment.** Section 8521 continues subdivision (h) of former Civil Code Section 220.20 without substantive change. See also Sections 8512 ("birth parent" defined), 8542 ("prospective adoptive parent" defined).

**§ 8524. "Independent adoption"**

**Comment.** Section 8524 continues subdivision (i) of former Civil Code Section 220.20 without change. For provisions relating to independent adoptions, see Chapter 3 (commencing with Section 8800) of Part 2.

See also Sections 8518 ("department" defined), 8530 ("licensed adoption agency" defined).

**§ 8527. "Intercountry adoption"**

**Comment.** Section 8527 continues subdivision (j) of former Civil Code Section 220.20 without substantive change. For provisions relating to intercountry adoptions, see Chapter 4 (commencing with Section 8900) of Part 2.

**§ 8530. "Licensed adoption agency"**

**Comment.** Section 8530 continues subdivision (k) of former Civil Code Section 220.20 without change. See also Section 8518 ("department" defined).

**§ 8533. "Noncustodial adoption agency"**

**Comment.** Section 8533 continues subdivision (l) of former Civil Code Section 220.20 without substantive change. The reference to "prospective adoptive applicants" in subdivision (a)(2) has been changed to "prospective adoptive parents." See Section 8542 ("prospective adoptive parent" defined). See also Sections 8512 ("birth parent" defined), 8521 ("full-service adoption agency" defined), 8530 ("licensed adoption agency" defined), 8539 ("place for adoption" defined).

**§ 8542. "Prospective adoptive parent"**

**Comment.** Section 8542 restates the substance of subdivision (p) of former Civil Code Section 220.20 and also applies the definition to adult adoptions.

**§ 8545. "Special-needs child"**

**Comment.** Section 8545 continues subdivision (q) of former Civil Code Section 220.20 without substantive change.

**§ 8548. "Stepparent adoption"**

**Comment.** Section 8548 supersedes subdivision (r) of former Civil Code Section 220.20. This section substitutes a cross-reference to the stepparent adoption procedure for the incomplete definition in former law. For provisions relating to stepparent adoptions, see Chapter 5 (commencing with Section 9000) of Part 2.

See also Section 8512 ("birth parent" defined).

## PART 2. ADOPTION OF UNMARRIED MINORS

### CHAPTER 1. GENERAL PROVISIONS

**§ 8600. Minors eligible for adoption**

**Comment.** Section 8600 restates former Civil Code Section 221.10 without substantive change and supersedes subdivision (e) of former Civil Code Section 220.20. The language of this section has been simplified.

**§ 8601. Required age difference between adoptive parents and child**

**Comment.** Section 8601 continues former Civil Code Section 221.12 without substantive change. In subdivision (a), "person adopting a child" has been changed to "prospective adoptive parent or parents" for consistency with other provisions. As revised, subdivision (a) provides that both prospective adoptive parents are subject to the 10-year age difference rule. See Section 8542 ("prospective adoptive parent" defined).

**§ 8602. Consent of child over 12**

**Comment.** Section 8602 continues former Civil Code Section 221.13 without substantive change.

**§ 8603. Consent of spouse of married adoptive parent**

**Comment.** Section 8603 continues former Civil Code Section 221.14 without substantive change. The language of this section has been simplified by eliminating paired references to husband and wife.

**§ 8604. Consent of parents**

**Comment.** Section 8604 continues the first three sentences of former Civil Code Section 221.20 without substantive change. The cross-reference in the introductory clause to what is now Section 8605 has been omitted as surplus. The word "birth" has been added preceding "parents" in subdivision (a) for consistency with the remainder of this section. The reference in subdivision (b) to the "parent having custody alone" has been changed to the "parent having sole custody" for consistency with the language of Sections 8700, 8814, and 9003. See also Section 8512 ("birth parent" defined).

**§ 8605. Consent of mother**

**Comment.** Section 8605 continues the fourth sentence of former Civil Code Section 221.20 without substantive change. The cross-reference to what is now Section 8604 has been omitted as surplus.

**§ 8606. Exception to requirement of parental consent**

**Comment.** Section 8606 continues the last sentence of the first paragraph and subdivisions (a)-(c) of former Civil Code Section 221.20 without substantive change. "Birth parent" has been substituted for references to "birth father or mother" in this section. See Section 8512 ("birth parent" defined). See also Section 8530 ("licensed adoption agency" defined).

**§ 8607. Required provisions in forms**

**Comment.** Section 8607 continues former Civil Code Section 221.30 (as amended by 1991 Cal. Stat. ch. 372, § 1) without substantive change. See also Sections 8512 ("birth parent" defined), 8518 ("department" defined).

**§ 8608. Regulations concerning medical reports**

**Comment.** Section 8608 continues former Civil Code Sections 222.26(b), 224.70(b), and 226.35(b) without substantive change. See also Sections 8515 ("delegated county adoption agency" defined), 8518 ("department" defined), 8530 ("licensed adoption agency" defined), 8542 ("prospective adoptive parent" defined).

**§ 8609. Advertising by unlicensed person prohibited**

**Comment.** Section 8609 continues former Civil Code Section 221.40 without substantive change. See also Sections 8512 ("birth parent" defined), 8518 ("department" defined), 8539 ("place for adoption" defined).

**§ 8610. Accounting report**

**Comment.** Section 8610 continues former Civil Code Section 221.50 without substantive change. See also Sections 8503 ("adoptive parent" defined), 8512 ("birth parent" defined), 8530 ("licensed adoption agency" defined), 8536 ("petitioner" defined), 8539 ("place for adoption" defined).

**§ 8611. Closed hearings**

**Comment.** Section 8611 continues former Civil Code Section 221.60 without substantive change. The reference to the "superior" court has been omitted as surplus. See Section 200 (jurisdiction in superior court).

**§ 8612. Examination by court; agreement; order of adoption**

**Comment.** Section 8612 continues former Civil Code Section 221.63 without substantive change, except for the last part of subdivision (c) of the former provision, which is continued in Section 8616. "Prospective adoptive parent" is used in place of the reference to "party adopting." See Section 8542 ("prospective adoptive parent" defined). See also Section 8503 ("adoptive parent" defined).

**§ 8613. Appearance by counsel for adoptive parent in military or Red Cross service**

**Comment.** Section 8613 continues former Civil Code Section 221.65 without substantive change. See also Section 8542 ("prospective adoptive parent" defined).

**§ 8614. Certificate of adoption**

**Comment.** Section 8614 continues former Civil Code Section 221.70 without substantive change. See also Section 8503 ("adoptive parent" defined), 8512 ("birth parent" defined).

**§ 8615. New birth certificate naming deceased spouse**

**Comment.** Section 8615 continues former Civil Code Section 221.72 without substantive change. See also Section 200 (jurisdiction in superior court). The reference to an "action for adoption" in subdivision (b) has been changed to "adoption proceeding" for consistency with the language of this part.

**§ 8616. Relationship between adopted child and adoptive parents**

**Comment.** Section 8616 continues without substantive change the last part of subdivision (c) of former Civil Code Section 221.63 and the second sentence of former Civil Code Section 221.74. See also Section 8503 ("adoptive parent" defined).

For a comparable provision, see Section 9305 (relationship in adoption of adults and married minors).

**§ 8617. Responsibility of birth parents terminated**

**Comment.** Section 8617 continues former Civil Code Section 221.76 without substantive change. See also Section 8512 ("birth parent" defined).

For a comparable provision, see Section 9306 (responsibility of birth parents of adults and unmarried minors).

**§ 8618. Name of child**

**Comment.** Section 8618 continues the first sentence of former Civil Code Section 221.74 without substantive change. See also Section 8503 ("adoptive parent" defined).

For a comparable provision, see Section 9304 (name of adopted adult).

**§ 8619. Children of Indian ancestry**

**Comment.** Section 8619 continues former Civil Code Section 221.80 without substantive change. See also Sections 8512 ("birth parent" defined), 8518 ("department" defined), 8530 ("licensed adoption agency" defined).

**CHAPTER 2. AGENCY ADOPTIONS****§ 8700. Relinquishment of child to department or licensed adoption agency**

**Comment.** Section 8700 continues former Civil Code Section 222.10 without substantive change. "Birth parent" has been substituted for "birth father or mother." See Sections 8512 ("birth parent" defined).

See also Section 8518 ("department" defined), 8530 ("licensed adoption agency" defined).

For related provisions, see Sections 8809 (consent to independent adoption), 9003 (consent to stepparent adoption).

**§ 8701. Information to birth parents on status of adoption**

**Comment.** Section 8701 continues former Civil Code Section 222.13 without substantive change. See also Sections 8512 ("birth parent" defined), 8518 ("department" defined), 8530 ("licensed adoption agency" defined).

For a comparable provision, see Section 8813 (request for information on status of independent adoption).

**§ 8702. Statement to birth parents at time of relinquishment**

**Comment.** Section 8702 continues former Civil Code Section 222.15 without substantive change. The statement concerning the requirements of Section 9203 has been revised to conform to the language of that section. Accordingly, for example, "petition" has been changed to "request." The "uncertain" option in the form language has been revised to refer to the department or agency for consistency with the substantive provisions of this section.

See also Sections 8512 ("birth parent" defined), 8518 ("department" defined), 8530 ("licensed adoption agency" defined), 8542 ("prospective adoptive parent" defined).

For a comparable provision, see Section 8818 (statement to birth parents in independent adoption).

**§ 8703. Notice to birth parent on termination of parental rights**

**Comment.** Section 8703 continues former Civil Code Section 222.18 without substantive change. Some language changes have been made for consistency with Section 8819. See also Sections 8512 ("birth parent" defined), 8518 ("department" defined), 8530 ("licensed adoption agency" defined).

For a comparable provision, see Section 8819 (notice of termination of parental rights in independent adoption).

**§ 8704. Custody by department or licensed adoption agency; petition only by prospective adoptive parents; consideration of long-term foster parents**

**Comment.** Section 8704 continues former Civil Code Section 222.20 without substantive change. In subdivision (a), the provision for return of physical custody to the department is new and is added for consistency with the first sentence of the subdivision. The reference in subdivision (b) to the "superior" court has been omitted as surplus. See Section 200 (jurisdiction in superior court). In subdivision (c), the reference to "prospective adoptive families" has been changed to the defined term "prospective adoptive parents." In subdivision (e), the former provision that "[t]his subdivision does not apply" to a child adjudged a dependent of the juvenile court has been changed to "[s]ubdivisions (c) and (d) do not apply." This is consistent with former Section 224n of the Civil Code, the predecessor section of former Section 222.20.

See also Sections 8512 ("birth parent" defined), 8518 ("department" defined), 8530 ("licensed adoption agency" defined), 8542 ("prospective adoptive parent" defined).

**§ 8705. Consent to adoption of child; deceased persons; court order granting agency custody; guardian appointed**

**Comment.** Section 8705 continues former Civil Code Section 222.22 without substantive change. See also Sections 8518 ("department" defined), 8530 ("licensed adoption agency" defined).

**§ 8706. Medical report on child and biological parents**

**Comment.** Section 8706 continues former Civil Code Section 222.26(a) without substantive change. See also Section 8542 ("prospective adoptive parent" defined).

For a comparable provision, see Section 8909 (medical report in intercountry adoption). For a related provision, see Section 8817 (medical report in independent adoption). See also Sections 8608 (regulations concerning medical reports), 9202 (availability of medical reports).

**§ 8707. Photo-listing service**

**Comment.** Section 8707 restates former Civil Code Section 222.30 without substantive change. The order of some provisions in this section has been changed. See also Sections 8518 ("department" defined), 8530 ("licensed adoption agency" defined).

**§ 8708. Placement preferences regarding racial, ethnic, and religious background**

**Comment.** Section 8708 continues former Civil Code Section 222.35 without substantive change. The cross-reference to Section 8709 in the introductory paragraph is new, but makes no substantive change.

**§ 8709. Good cause not to follow rules in Section 8708**

**Comment.** Section 8709 restates former Civil Code Section 222.36 without substantive change, except that the documentation requirement in subdivision (c) has been limited to apply only to subdivision (c), as provided in former Civil Code Section 276.1(c). The reference to "birth" parent in subdivision (a) is new. See Section 8512 ("birth parent" defined).

**§ 8710. Search for families meeting racial or ethnic criteria**

**Comment.** Section 8710 continues former Civil Code Section 222.37 without substantive change. The requirement that the department adopt rules in subdivision (a) has been separated from the requirement in former Civil Code Section 222.37 that agencies follow the rules adopted. See also Section 8518 ("department" defined).

**§ 8711. Applicability of racial or ethnic criteria**

**Comment.** Section 8711 continues former Civil Code Section 222.38 without substantive change. The reference to "birth" parents has been added in subdivision (c) for clarity. See Section 8512 ("birth parent" defined).

**§ 8712. Investigation of prospective adoptive parents**

**Comment.** Section 8712 continues former Civil Code Section 222.40 without substantive change. See also sections 8509 ("applicant" defined), 8518 ("department" defined), 8530 ("licensed adoption agency" defined), 8542 ("prospective adoptive parent" defined), 8545 ("special-needs child" defined).

For comparable provisions, see Sections 8811 (investigation in independent adoption), 8908 (investigation in intercountry adoption). For a related provision, see Section 9001(a) (investigation in stepparent adoption).

**§ 8713. Adoption petition and order**

**Comment.** Section 8713 continues former Civil Code Section 222.70 without substantive change. The reference to an "action" for adoption has been changed to "proceeding" for consistency with other provisions in this chapter. The reference to the "superior" court in subdivision (a) has been omitted as surplus. See Section 200 (jurisdiction in superior court). See also Section 8536 ("petitioner" defined).

For comparable provisions, see Sections 8802 (petition for independent adoption), 8911 (petition for intercountry adoption), 9000 (petition for stepparent adoption).

**§ 8714. Concealment or removal of child from county**

**Comment.** Section 8714 continues former Civil Code Section 222.50 without substantive change. In subdivision (a), the prohibition of removal "for any period of time" has been omitted as surplus.

See also Sections 8512 ("birth parent" defined), 8518 ("department" defined), 8530 ("licensed adoption agency" defined), 8536 ("petitioner" defined).

For comparable provisions, see Sections 8803 (removal and concealment in independent adoption), 8912 (removal and concealment in intercountry adoption).

**§ 8715. Report of department or agency**

**Comment.** Section 8715 continues former Civil Code Section 222.75 without substantive change. The language of this provision has been revised to use the mandatory "shall" in place of the former statement that "it shall be the duty" to submit the report. See also Sections 8518 ("department" defined), 8530 ("licensed adoption agency" defined).

For related provisions, see Sections 8807 (report of department or agency in independent adoption), 8914 (report of department or agency in intercountry adoption), 9001 (report of county welfare department or probation officer in stepparent adoption).



**§ 8716. Fee**

**Comment.** Section 8716 continues former Civil Code Section 222.72 without substantive change. See also Sections 8503 ("adoptive parent" defined), 8518 ("department" defined), 8542 ("prospective adoptive parent" defined), 8545 ("special-needs child" defined).

For related provisions, see Sections 8810 (fee for report in independent adoption), 9002 (fee for report in stepparent adoption).

**§ 8717. Copy of report or findings to petitioner or attorney**

**Comment.** Section 8717 continues former Civil Code Section 222.77 without substantive change. See also Sections 8518 ("department" defined), 8530 ("licensed adoption agency" defined), 8536 ("petitioner" defined).

For comparable provisions, see Sections 8821 (copy of report in independent adoption), 8915 (copy of report in intercountry adoption).

**§ 8718. Appearance of prospective adoptive parents and child**

**Comment.** Section 8718 continues former Civil Code Sections 221.62 and 222.78 without substantive change. "Prospective adoptive parents" has been substituted for "person or persons desiring to adopt a child." See Section 8542 ("prospective adoptive parent" defined).

For comparable provisions, see Sections 8823 (appearance in independent adoptions), 8913 (appearance in intercountry adoptions), 9007 (appearance in stepparent adoptions).

**§ 8719. Notice to department of motion to withdraw or dismiss petition**

**Comment.** Section 8719 continues former Civil Code Section 222.80 without substantive change. See also Section 8518 ("department" defined), 8536 ("petitioner" defined).

For a comparable provision, see Section 9006(a) (notice of withdrawal or dismissal in stepparent adoption). For related provisions, see Sections 8804 (notice of withdrawal or dismissal in independent adoption), 8916 (notice of withdrawal or dismissal in intercountry adoption).

**§ 8720. Unfavorable recommendation by department or agency**

**Comment.** Section 8720 continues former Civil Code Section 222.90 without substantive change. The reference to the "superior" court has been omitted as surplus. See Section 200 (jurisdiction in superior court). The reference to the "clerk of the court in which the proceeding is pending" is shortened to the "clerk" to eliminate surplus language.

See also Sections 8512 ("birth parent" defined), 8518 ("department" defined), 8530 ("licensed adoption agency" defined), 8536 ("petitioner" defined).

For comparable provisions, see Sections 8822 (unfavorable recommendation in independent adoption), 8917 (unfavorable recommendation in intercountry adoption).

## CHAPTER 3. INDEPENDENT ADOPTIONS

**§ 8800. Legislative declaration concerning attorney-client relationship**

**Comment.** Section 8800 continues former Civil Code Section 224.10 without substantive change. "Attorney" has been substituted for "counsel" for internal consistency. See also Sections 8512 ("birth parent" defined), 8542 ("prospective adoptive parent" defined).

**§ 8801. Selection of prospective adoptive parents**

**Comment.** Subdivision (a) of Section 8801 continues former Civil Code Section 224.20 without substantive change. Subdivision (b) continues subdivision (m) of former Civil Code Section 220.20 without substantive change. See also Sections 8512 ("birth parent" defined), 8542 ("prospective adoptive parent" defined).

**§ 8802. Adoption petition and order**

**Comment.** Section 8802 continues former Civil Code Section 224.30 without substantive change. The reference to an "action" for adoption has been changed to "proceeding" for consistency with other provisions in this chapter. The reference to the "superior" court in subdivision (a) has been omitted as surplus. See Section 200 (jurisdiction in superior court). See also Sections 8518 ("department" defined), 8536 ("petitioner" defined).

For comparable provisions, see Sections 8713 (petition for agency adoption), 8911 (petition for intercountry adoption), 9000 (petition for stepparent adoption).

**§ 8803. Concealment or removal of child from county**

**Comment.** Section 8803 continues former Civil Code Section 224.33 without substantive change. See also Sections 8512 ("birth parent" defined), 8515 ("delegated county adoption agency" defined), 8518 ("department" defined), 8536 ("petitioner" defined).

For comparable provisions, see Sections 8714 (removal and concealment in agency adoption), 8912 (removal and concealment in intercountry adoption).

**§ 8804. Notice to department of motion to withdraw or dismiss petition**

**Comment.** Section 8804 continues former Civil Code Section 224.36 (as amended by 1991 Cal. Stat. ch. 697, § 1) without substantive change. See also Sections 8512 ("birth parent" defined), 8515 ("delegated county adoption agency" defined), 8518 ("department" defined), 8536 ("petitioner" defined).

For a comparable provision, see Section 8916 (notice of withdrawal or dismissal in intercountry adoption). For related provisions, see Sections 8719 (notice of withdrawal or dismissal in agency adoption), 9006(a) (notice of withdrawal or dismissal in stepparent adoption).

**§ 8805. Removal of child from home of petitioners**

**Comment.** Section 8805 continues former Civil Code Section 224.37 without substantive change. See also Sections 8515 ("delegated county adoption agency" defined), 8518 ("department" defined), 8536 ("petitioner" defined), 8539 ("place for adoption" defined).

**§ 8806. Duty of department or agency**

**Comment.** Section 8806 continues former Civil Code Section 224.40 without substantive change. See also Sections 8512 ("birth parent" defined), 8515 ("delegated county adoption agency" defined), 8518 ("department" defined), 8536 ("petitioner" defined).

**§ 8807. Investigation of proposed independent adoption; report**

**Comment.** Section 8807 continues former Civil Code Section 224.42 without substantive change. See also Sections 8515 ("delegated county adoption agency" defined), 8518 ("department" defined), 8524 ("independent adoption" defined), 8536 ("petitioner" defined).

For related provisions, see Sections 8715 (report of department or agency in agency adoption), 8914 (report of department or agency in intercountry adoption), 9001 (report of county welfare department or probation officer in stepparent adoption).

**§ 8808. Interview by department or agency**

**Comment.** Section 8808 continues former Civil Code Section 224.44 without substantive change. See also Sections 8515 ("delegated county adoption agency" defined), 8518 ("department" defined), 8536 ("petitioner" defined).

**§ 8809. Request to sign consent in presence of court**

**Comment.** Section 8809 continues former Civil Code Section 224.45 (as amended by 1991 Cal. Stat. ch. 697, § 2) without substantive change. The reference to the "superior" court in subdivision (a) has been omitted as surplus. See Section 200 (jurisdiction in superior court). The operative date provision in former Civil Code Section 224.45(d) is omitted as surplus.

See also Sections 8515 ("delegated county adoption agency" defined), 8518 ("department" defined), 8536 ("petitioner" defined).

For related provisions, see Sections 8700 (consent to agency adoption), 9003 (consent to stepparent adoption).

**§ 8810. Fee**

**Comment.** Section 8810 continues former Civil Code Section 224.47 without substantive change. The reference to the "superior" court in subdivision (a) has been omitted as surplus. See Section 200 (jurisdiction in superior court).

See also Sections 8515 ("delegated county adoption agency" defined), 8518 ("department" defined), 8524 ("independent adoption" defined).

For related provisions, see Sections 8716 (fee for report in agency adoption), 9002 (fee for report in stepparent adoption).

**§ 8811. Investigation of prospective adoptive parents**

**Comment.** Section 8811 continues former Civil Code Section 224.49 without substantive change. See also Sections 8515 ("delegated county adoption agency" defined), 8518 ("department" defined), 8536 ("petitioner" defined), 8542 ("prospective adoptive parent" defined).

For comparable provisions, see Sections 8712 (investigation in agency adoption), 8908 (investigation in intercountry adoption). For a related provision, see Section 9001 (a) (investigation in stepparent adoption).

**§ 8813. Request for information on status of adoption**

**Comment.** Section 8813 continues former Civil Code Section 224.61 without substantive change. See also Sections 8512 ("birth parent" defined), 8515 ("delegated county adoption agency" defined), 8518 ("department" defined), 8539 ("place for adoption" defined).

For a comparable provision, see Section 8701 (information on status of agency adoption).

**§ 8814. Consent of birth parents to adoption**

**Comment.** Section 8814 continues former Civil Code Section 224.62 without substantive change. See also Sections 8512 ("birth parent" defined), 8515 ("delegated county adoption agency" defined), 8518 ("department" defined), 8536 ("petitioner" defined).

**§ 8815. Petition for withdrawal of consent**

**Comment.** Section 8815 continues former Civil Code Section 224.64 without substantive change. The introductory phrase "once given" in the former provision has been omitted as surplus. In subdivisions (a) and (b), the phrase "person or persons to whose adoption of the child the consent was given" has been changed to "prospective adoptive parent or parents."

See also Sections 8512 ("birth parent" defined), 8515 ("delegated county adoption agency" defined), 8518 ("department" defined), 8542 ("prospective adoptive parent" defined).

For a comparable provision, see Section 9005 (consent in stepparent adoptions).

**§ 8816. Consent of agency or department**

**Comment.** Section 8816 continues former Civil Code Section 224.66 without substantive change. The reference to the "superior" court has been omitted as surplus. See Section 200 (jurisdiction in superior court).

See also Sections 8512 ("birth parent" defined), 8515 ("delegated county adoption agency" defined), 8518 ("department" defined), 8524 ("independent adoption" defined).

**§ 8817. Medical report on child and biological parents**

**Comment.** Section 8817 continues former Civil Code Section 224.70(a) without substantive change. See also Sections 8515 ("delegated county adoption agency" defined), 8518 ("department" defined), 8542 ("prospective adoptive parent" defined).

For related provisions, see Sections 8706 (medical report in agency adoption), 8909 (medical report in intercountry adoption). See also Sections 8608 (regulations concerning medical reports), 9202 (availability of medical reports).

**§ 8818. Statement to birth parents at time of consent**

**Comment.** Section 8818 continues former Civil Code Section 224.73 (as amended by 1991 Cal. Stat. ch. 697, § 4) without substantive change. The statement concerning the requirements of Section 9203 has been revised to conform to the language of that section. Accordingly, for example, "petition" has been changed to "request." The "uncertain" option in the form language has been revised to refer to the department for consistency with the substantive provisions of this section.

See also Section 8512 ("birth parent" defined), 8518 ("department" defined), 8542 ("prospective adoptive parent" defined).

For a comparable provision, see Section 8702 (statement to birth parents in agency adoption).

**§ 8819. Notice to birth parent on termination of parental rights**

**Comment.** Section 8819 continues former Civil Code Section 224.76 without substantive change. Some language changes have been made for consistency with Section 8703. See also Sections 8512 ("birth parent" defined), 8515 ("delegated county adoption agency" defined), 8518 ("department" defined).

For a comparable provision, see Section 8703 (notice of termination of parental rights in agency adoption).

**§ 8820. Appeal from department or agency disapproval**

**Comment.** Section 8820 continues former Civil Code Section 224.80 without substantive change. This section has been divided into subdivisions and reorganized. In subdivision (c), the reference to "findings" has been changed to "report" for internal consistency.

See also Sections 8512 ("birth parent" defined), 8515 ("delegated county adoption agency" defined), 8518 ("department" defined), 8536 ("petitioner" defined).

**§ 8821. Copy of report or findings to petitioner or attorney**

**Comment.** Section 8821 continues former Civil Code Section 224.91 without substantive change. See also Sections 8515 ("delegated county adoption agency" defined), 8518 ("department" defined).

For comparable provisions, see Sections 8717 (copy of report in agency adoption), 8915 (copy of report in intercountry adoption).

**§ 8822. Unfavorable recommendation by department or agency**

**Comment.** Section 8822 continues former Civil Code Section 224.93 without substantive change. See also Sections 8512 ("birth parent" defined), 8515 ("delegated county adoption agency" defined), 8518 ("department" defined).

For comparable provisions, see Sections 8720 (unfavorable recommendation in agency adoption), 8917 (unfavorable recommendation in intercountry adoption).

**§ 8823. Appearance of prospective adoptive parents and child**

**Comment.** Section 8823 continues former Civil Code Sections 221.62 and 224.95 without substantive change. "Prospective adoptive parents" has been substituted for "person or persons desiring to adopt a child." See also Section 8542 ("prospective adoptive parent" defined).

For comparable provisions, see Sections 8718 (appearance in agency adoptions), 8913 (appearance in intercountry adoptions), 9007 (appearance in stepparent adoptions).

## CHAPTER 4. INTERCOUNTRY ADOPTIONS

**§ 8900. Adoption services exclusively by licensed adoption agencies**

**Comment.** Section 8900 continues former Civil Code Section 226.10 without substantive change. See also Sections 8518 ("department" defined), 8527 ("intercountry adoption" defined).

**§ 8901. Department regulations**

**Comment.** Section 8901 continues former Civil Code Section 226.11 without change. See also Sections 8218 ("department" defined), 8527 ("intercountry adoption" defined).

**§ 8902. Agency services**

**Comment.** Section 8902 continues former Civil Code Section 226.20 without substantive change. See also Sections 8509 ("applicant" defined), 8527 ("intercountry adoption" defined), 8530 ("licensed adoption agency" defined).

**§ 8903. Care, custody, and control of child; Medi-Cal eligibility**

**Comment.** Section 8903 continues former Civil Code Section 226.21 without substantive change. See also Sections 8527 ("intercountry adoption" defined), 8530 ("licensed adoption agency" defined), 8542 ("prospective adoptive parent" defined).

**§ 8904. Agency services for adoptions finalized in foreign country**

**Comment.** Section 8904 continues former Civil Code Section 226.23 without substantive change. See also Sections 8530 ("intercountry adoption" defined), 8530 ("licensed adoption agency" defined).

**§ 8905. Agreements of licensed adoption agencies with other agencies**

**Comment.** Section 8905 continues former Civil Code Section 226.25 without substantive change. See also Section 8530 ("licensed adoption agency" defined).

**§ 8906. Agreement to share or transfer financial responsibility**

**Comment.** Section 8906 continues former Civil Code Section 226.27 without substantive change. See also Sections 8530 ("licensed adoption agency" defined), 8542 ("prospective adoptive parent" defined).

**§ 8907. Funding by fees**

**Comment.** Section 8907 continues former Civil Code Section 226.28 without substantive change. See also Sections 8518 ("department" defined), 8530 ("licensed adoption agency" defined).

**§ 8908. Investigation of prospective adoptive parents**

**Comment.** Section 8908 continues former Civil Code Section 226.30 without substantive change. See also Section 8530 ("licensed adoption agency" defined).

For comparable provisions, see Sections 8712 (investigation in agency adoption), 8811 (investigation in independent adoption). For a related provision, see Section 9001(a) (investigation in stepparent adoption).

**§ 8909. Medical report on child and biological parents**

**Comment.** Section 8909 continues former Civil Code Section 226.35(a) without substantive change. See also Sections 8518 ("department" defined), 8542 ("prospective adoptive parent" defined).

For a comparable provision, see Section 8706 (medical report in agency adoption). For a related provision, see Section 8817 (medical report in independent adoption). See also Sections 8608 (regulations concerning medical reports), 9202 (availability of medical reports).

**§ 8910. Petition to adopt within 30 days of placement**

**Comment.** Section 8910 continues former Civil Code Section 226.50 without substantive change. See also Sections 8539 ("place for adoption" defined), 8542 ("prospective adoptive parent" defined).

**§ 8911. Adoption petition; order**

**Comment.** Section 8911 continues former Civil Code Section 226.52 without substantive change. In subdivision (a), the reference to an "action" has been changed to "proceeding" for consistency with other sections. The reference to the "superior" court in subdivision (a) has been omitted as surplus. See Section 200 (jurisdiction in superior court). See also Section 8518 ("department" defined), 8536 ("petitioner" defined).

For comparable provisions, see Sections 8713 (petition for agency adoption), 8802 (petition for independent adoption), 9000 (petition for stepparent adoption).

**§ 8912. Concealment or removal of child from county**

**Comment.** Section 8912 continues former Civil Code Section 226.40 without substantive change. See also Sections 8512 ("birth parent" defined), 8530 ("licensed adoption agency" defined), 8536 ("petitioner" defined), 8539 ("place for adoption" defined).

For comparable provisions, see Sections 8714 (removal and concealment in agency adoption), 8803 (removal and concealment in independent adoption).

**§ 8913. Appearance of prospective adoptive parents and child**

**Comment.** Section 8913 continues former Civil Code Sections 221.62 and 226.55 without substantive change. "Prospective adoptive parents" has been substituted for "person or persons desiring to adopt a child." See also Section 8542 ("prospective adoptive parent" defined).

For comparable provisions, see Sections 8718 (appearance in agency adoptions), 8823 (appearance in independent adoptions), 9007 (appearance in stepparent adoptions).

**§ 8914. Report to court**

**Comment.** Section 8914 continues former Civil Code Section 226.57 without substantive change. See also Sections 8518 ("department" defined), 8530 ("licensed adoption agency" defined).

For related provisions, see Sections 8715 (report of department or agency in agency adoption), 8807 (report of department or agency in independent adoption), 9001 (report of county welfare department or probation officer in stepparent adoption).

**§ 8915. Copy of report or findings to petitioner or attorney**

**Comment.** Section 8915 continues former Civil Code Section 226.59 without change. See also Section 8530 ("licensed adoption agency" defined), 8536 ("petitioner" defined).

For comparable provisions, see Sections 8717 (copy of report in agency adoption), 8821 (copy of report in independent adoption).

**§ 8916. Notice to department of motion to withdraw or dismiss**

**Comment.** Section 8916 continues former Civil Code Section 226.60 without substantive change. See also Sections 8518 ("department" defined), 8530 ("licensed adoption agency" defined), 8536 ("petitioner" defined).

For a comparable provision, see Section 8804 (notice of withdrawal or dismissal in independent adoption). For related provisions, see Sections 8719 (notice of withdrawal or dismissal in agency adoption), 9006(a) (notice of withdrawal or dismissal in stepparent adoption).

**§ 8917. Unfavorable recommendation by licensed adoption agency**

**Comment.** Section 8917 continues former Civil Code Section 226.64 without substantive change. See also Section 8530 ("licensed adoption agency" defined).

For comparable provisions, see Sections 8720 (unfavorable recommendation in agency adoption), 8822 (unfavorable recommendation in independent adoption).

**§ 8918. Transfer of child to care of agency**

**Comment.** Section 8918 continues former Civil Code Section 226.66 without substantive change. See also Section 8530 ("licensed adoption agency" defined).

## CHAPTER 5. STEPPARENT ADOPTIONS

**§ 9000. Adoption petition; order**

**Comment.** Section 9000 continues former Civil Code Section 227.10 without substantive change. The reference to the "superior" court in subdivision (a) has been omitted as surplus. See Section 200 (jurisdiction in superior court). See also Section 8536 ("petitioner" defined).

For comparable provisions, see Sections 8713 (petition for agency adoption), 8802 (petition for independent adoption), 8911 (petition for intercountry adoption). For other related provisions, see Sections 8715 (report of department or agency in agency adoption), 8807 (report of department or agency in independent adoption), 8914 (report of department or agency in intercountry adoption).

**§ 9001. Investigation**

**Comment.** Section 9001 continues former Civil Code Section 227.20 without substantive change. See also Section 8548 ("stepparent adoption" defined).

For related provisions, see Sections 8712 (investigation in agency adoption), 8811 (investigation in independent adoption), 8908 (investigation in intercountry adoption).

**§ 9002. Cost of investigation**

**Comment.** Section 9002 continues former Civil Code Section 227.30 (as amended by 1991 Cal. Stat. ch. 120, § 1) without substantive change. The first part of the first sentence has been revised to use the defined term "stepparent adoption" and to delete the phrase "stepparent adopting a child of his or her spouse" to eliminate language that is inconsistent with the definition. See Section 8548 ("stepparent adoption" defined). Other language changes have been made for consistency with corresponding provisions. See Sections 8716 and 8810. See also Sections 8542 ("prospective adoptive parent" defined).

For related provisions, see Sections 8716 (fee for report in agency adoption), 8810 (fee for report in independent adoption).

**§ 9003. Consent of birth parents to adoption**

**Comment.** Section 9003 continues former Civil Code Section 227.40 without substantive change. The first sentence of subdivision (a) has been revised to require consent of "birth parents" rather than "parents." This terminology is consistent with subdivision (d). The reference to the "superior" court in subdivision (a) has been omitted as surplus. See Section 200 (jurisdiction in superior court).

See also Sections 8512 ("birth parent" defined), 8548 ("stepparent adoption" defined).

For related provisions, see Sections 8700 (consent to agency adoption), 8809 (consent to independent adoption).

**§ 9004. Consent form**

**Comment.** Section 9004 continues former Civil Code Section 227.44 without change. See also Sections 8512 ("birth parent" defined), 8518 ("department" defined), 8548 ("stepparent adoption" defined).

**§ 9005. Motion or petition to withdraw consent**

**Comment.** Section 9005 continues former Civil Code Section 227.46 without substantive change. The introductory phrase "once given" in the former provision has been omitted as surplus. The reference to the "superior" court in subdivision (a) has been omitted as surplus. See Section 200 (jurisdiction in superior court). In subdivision (b), the phrase "persons to whose adoption of the child the consent was given" has been changed to "prospective adoptive parent."

See also Section 8542 ("prospective adoptive parent" defined).

For a comparable provision, see Section 8815 (consent in independent adoptions).

**§ 9006. Notice of withdrawal or dismissal; dismissal where consent refused**

**Comment.** Section 9006 continues former Civil Code Section 227.50 without substantive change. See also Sections 8512 ("birth parent" defined), 8536 ("petitioner" defined).

For a comparable provision, see Section 8719 (notice of withdrawal or dismissal in agency adoption). For related provisions, see Sections 8804 (notice of withdrawal or dismissal in independent adoption), 8916 (notice of withdrawal or dismissal in intercountry adoption).

**§ 9007. Appearance of prospective adoptive parent and child**

**Comment.** Section 9007 continues former Civil Code Sections 221.62 and 227.60 without substantive change. The phrase "person or persons desiring to adopt a child" has been changed to "prospective adoptive parent" for consistency with the remainder of this chapter.

For comparable provisions, see Sections 8718 (appearance in agency adoptions), 8823 (appearance in independent adoptions), 8913 (appearance in intercountry adoptions). See also Section 8542 ("prospective adoptive parent" defined).

**CHAPTER 6. VACATION OF ADOPTION**

**§ 9100. Petition to set aside adoption; order**

**Comment.** Section 9100 continues former Civil Code Section 228.10 without substantive change. In subdivisions (a) and (b), the reference to a "decree" of adoption has been omitted as surplus. In subdivision (c), the reference to the "superior" court has been omitted as surplus. See Section 200 (jurisdiction in superior court). The "it shall be the duty" language in subdivision (c) has been replaced by "shall."

See also Section 8518 ("department" defined).

**§ 9101. Court order to county officer**

**Comment.** Section 9101 continues former Civil Code Section 228.13 without substantive change. In subdivision (a), the reference to a "decree" of adoption has been omitted as surplus.

**§ 9102. Limitation of actions**

**Comment.** Section 9102 continues former Civil Code Section 228.15 without substantive change. The references to a "decree" of adoption have been omitted as surplus.

**CHAPTER 7. DISCLOSURE OF INFORMATION**

**§ 9200. Confidentiality of records; certificate of adoption**

**Comment.** Section 9200 continues former Civil Code Section 229.10 without substantive change. In subdivisions (a) and (b), references to the "action" have been changed to the "proceeding."

See also Sections 8503 ("adoptive parent" defined), 8512 ("birth parent" defined), 8548 ("stepparent adoption" defined).

**§ 9201. Information to public agencies and licensed adoption agencies**

**Comment.** Section 9201 continues former Civil Code Section 229.20 without substantive change. See also Sections 8518 ("department" defined), 8530 ("licensed adoption agency" defined).

**§ 9202. Medical report**

**Comment.** Section 9202 continues former Civil Code Section 229.30 without substantive change. This section has been substantially reorganized. The reference to the "superior" court in subdivision (b) has been omitted as surplus. See Section 200 (jurisdiction in superior court). See also Sections 8503 ("adoptive parent" defined), 8518 ("department" defined), 8530 ("licensed adoption agency" defined).



**§ 9203. Disclosure of identity of birth parents**

**Comment.** Section 9203 continues former Civil Code Section 229.40 without substantive change. This section has been substantially reorganized. See also Sections 8503 ("adoptive parent" defined), 8512 ("birth parent" defined), 8518 ("department" defined), 8530 ("licensed adoption agency" defined).

**§ 9204. Waiver of confidentiality of adoption records**

**Comment.** Section 9204 continues former Civil Code Section 229.50 (as amended by 1991 Cal. Stat. ch. 135, § 1) without substantive change. In the first sentence of subdivision (a), "licensed agency" has been changed to "licensed adoption agency" for internal consistency and for consistency with the defined term.

See also Sections 8503 ("adoptive parent" defined), 8512 ("birth parent" defined), 8518 ("department" defined), 8530 ("licensed adoption agency" defined).

**§ 9205. Request for contact with biological sibling**

**Comment.** Section 9205 continues former Civil Code Section 229.60 (as amended by 1991 Cal. Stat. ch. 697, § 5) without substantive change. The provisions of subdivision (a) have been substantially revised.

See also Sections 8503 ("adoptive parent" defined), 8512 ("birth parent" defined), 8518 ("department" defined).

**§ 9206. Release of letters, photographs, or other items of personal property**

**Comment.** Section 9206 continues former Civil Code Section 229.70 without substantive change. See also Sections 8503 ("adoptive parent" defined), 8512 ("birth parent" defined), 8518 ("department" defined), 8530 ("licensed adoption agency" defined).

**PART 3. ADOPTION OF ADULTS AND MARRIED MINORS****CHAPTER 1. GENERAL PROVISIONS****§ 9300. Adoption of adult or married minor**

**Comment.** Section 9300 restates former Civil Code Section 230.10 without substantive change.

**§ 9301. Consent of spouse of prospective adoptive parent**

**Comment.** Section 9301 continues the first sentence of the second paragraph of subdivision (a) of former Civil Code Section 230.20 without substantive change.

**§ 9302. Consent of spouse of proposed adoptee**

**Comment.** Section 9302 continues the second and third sentences of the second paragraph of subdivision (a) of former Civil Code Section 230.20 without substantive change and supersedes the second paragraph of subdivision (c) of former Civil Code Section 230.20. See also Section 8518 ("department" defined).

**§ 9303. Adoption of more than one unrelated adult within one year**

**Comment.** Section 9303 continues former Civil Code Section 230.12 without substantive change. "Biological sibling" has been substituted for "sibling by birth" for consistency with the language of Section 9205.

See also Section 8542 ("prospective adoptive parent" defined).

**§ 9304. Name of adopted person**

**Comment.** Section 9304 continues the first sentence of former Civil Code Section 230.14 without substantive change. See also Section 8503 ("adoptive parent" defined).

For a comparable provision, see Section 8618 (name of adopted child).

**§ 9305. Relationship of parent and child**

**Comment.** Section 9305 continues the second sentence of former Civil Code Section 230.14 without substantive change. See also Section 8503 ("adoptive parent" defined).

For a comparable provision, see Section 8616 (relationship in adoption of unmarried minors).

**§ 9306. Relief from parental duties of birth parents**

**Comment.** Section 9306 continues former Civil Code Section 230.16 without substantive change. See also Section 8512 ("birth parent" defined).

For a comparable provision, see Section 8617 (responsibility of birth parents of unmarried minors).

**§ 9307. Hearing open and public**

**Comment.** Section 9307 continues subdivision (d) of former Civil Code Section 230.20 without substantive change.

**CHAPTER 2. PROCEDURE FOR ADULT ADOPTION****§ 9320. Adoption agreement**

**Comment.** Section 9320 continues the first paragraph of subdivision (a) of former Civil Code Section 230.20 without substantive change.

**§ 9321. Petition for approval of adoption**

**Comment.** Subdivision (a) of Section 9321 continues the first sentence of subdivision (b) of former Civil Code Section 230.20 without substantive change. Subdivision (b) continues subdivision (f)(1) of former Civil Code Section 230.20 without substantive change. See Section 200 (jurisdiction in superior court). See also Sections 8512 ("birth parent" defined), 8542 ("prospective adoptive parent" defined).

**§ 9322. Setting matter for hearing**

**Comment.** Section 9322 restates the substance of the first part of the second sentence of subdivision (b) of former Civil Code Section 230.20.

**§ 9323. Notice to and appearance by interested persons**

**Comment.** Section 9323 continues the third sentence of subdivision (b) of former Civil Code Section 230.20 without substantive change.

**§ 9324. Appearance by prospective adoptive parent and proposed adoptee**

**Comment.** Section 9324 continues the last part of the second sentence of subdivision (b) of former Civil Code Section 230.20 without change. See also Section 8542 ("prospective adoptive parent" defined).

**§ 9325. Court's discretion to require report**

**Comment.** Section 9325 continues the last sentence of subdivision (b) of former Civil Code Section 230.20 without change. See also Section 8518 ("department" defined).

**§ 9326. Notice of hearing for developmentally disabled adult**

**Comment.** Section 9326 continues subdivision (e) of former Civil Code Section 230.20 without substantive change. See also Sections 8512 ("birth parent" defined), 8542 ("prospective adoptive parent" defined).

**§ 9327. Report concerning person with developmental disability**

**Comment.** Section 9327 continues subdivision (f)(2) of former Civil Code Section 230.20 without substantive change. See also Section 8542 ("prospective adoptive parent" defined).

**§ 9328. Hearing and order**

**Comment.** Section 9328 continues the first and third paragraphs of subdivision (c) of former Civil Code Section 230.20 without substantive change. See also Section 8503 ("adoptive parent" defined).

**CHAPTER 3. PROCEDURE FOR TERMINATING ADULT ADOPTION****§ 9340. Petition to terminate relationship of parent and child**

**Comment.** Section 9340 continues subdivision (g) of former Civil Code Section 230.20 without substantive change. See Section 212 (verification of pleadings). See also Sections 8503 ("adoptive parent" defined), 8518 ("department" defined).

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DIVISION 20. PILOT PROJECTS

PART 1. CHILD SUPPORT PILOT PROJECTS

**§ 20000. Legislative declarations and intent**

**Comment.** Section 20000 is the same as former Civil Code Section 4760 (added by 1991 Cal. Stat. ch. 1131, § 1).

**§ 20001. Pilot projects in Santa Clara and San Mateo counties**

**Comment.** Section 20001 is the same as former Civil Code Section 4761 (added by 1991 Cal. Stat. ch. 1131, § 1).

**§ 20002. Duration of projects**

**Comment.** Section 20002 is the same as former Civil Code Section 4762 (added by 1991 Cal. Stat. ch. 1131, § 1).

**§ 20003. Hearings on motions for temporary orders; court may order that proceedings be conducted outside pilot project**

**Comment.** Section 20003 is the same as former Civil Code Section 4763 (added by 1991 Cal. Stat. ch. 1131, § 1). Subdivision (b) is revised to make the pilot projects apply in hearings "under this code." The former provision applied to proceedings under the former Family Law Act, Uniform Parentage Act, and Domestic Violence Prevention Act, all of which are now compiled in the Family Code.

**§ 20004. Children served by district attorney**

**Comment.** Section 20004 is the same as former Civil Code Section 4764 (added by 1991 Cal. Stat. ch. 1131, § 1).

**§ 20005. Priority for hearing**

**Comment.** Section 20005 is the same as former Civil Code Section 4765 (added by 1991 Cal. Stat. ch. 1131, § 1).

**§ 20006. Participation by attorneys and others limited**

**Comment.** Section 20006 is the same as former Civil Code Section 4766 (added by 1991 Cal. Stat. ch. 1131, § 1).

**§ 20007. Child support advisors**

**Comment.** Section 20007 is the same as former Civil Code Section 4767 (added by 1991 Cal. Stat. ch. 1131, § 1).

**§ 20008. Orders for temporary child support shall comply with uniform guidelines and include health insurance coverage**

**Comment.** Section 20008 is the same as former Civil Code Section 4768 (added by 1991 Cal. Stat. ch. 1131, § 1).

**§ 20009. Informational publication**

**Comment.** Section 20009 is the same as former Civil Code Section 4769 (added by 1991 Cal. Stat. ch. 1131, § 1).

**§ 20010. Procedure for motions filed under this part**

**Comment.** Section 20010 continues former Civil Code Section 4770 (added by 1991 Cal. Stat. ch. 1131, § 1) without substantive change.

**§ 20011. Providing court with tax returns and paycheck stubs**

**Comment.** Section 20011 is the same as former Civil Code Section 4771 (added by 1991 Cal. Stat. ch. 1131, § 1).

**§ 20012. Study and report by Senate Office of Research**

**Comment.** Section 20012 is the same as former Civil Code Section 4772 (added by 1991 Cal. Stat. ch. 1131, § 1).

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# California Law Revision Commission

Staff Working Draft

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## Comments to the Family Code Conforming Revisions (AB 2641)

1992 (in progress)

*These Comments are provided for the convenience of persons reviewing the Conforming Revisions to the Family Code bill, Assembly Bill 2641 (Speier), as amended in Assembly, March 19, 1992. The Comments are not final and have not been approved by the Commission.*

*This material supersedes the Comments in Memorandum 92-18 (February 28, 1992).*

C

California Law Revision Commission  
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COMMENTS TO AB 2641

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### BUSINESS & PROFESSIONS CODE

**Bus. & Prof. Code § 1320 (technical amendment). Denial, revocation, or suspension of license**

**Comment.** Subdivision (j) of Section 1320 is amended to substitute a reference to the Family Code provisions that replace the former Civil Code provisions.

### CIVIL CODE

**Civ. Code §§ 25-42 (repealed). Persons**

**Comment.** Part 1 (commencing with Section 25) is replaced by a new Part 1 (commencing with Section 38) of Division 1 of the Civil Code (persons of unsound mind), by Civil Code Section 43.1 (child conceived but not yet born), by Code of Civil Procedure Section 340.4 (statute of limitations on pre-birth injury), and by Division 11 (commencing with Section 6500) of the Family Code (minors).

**§ 38 (added). Contract by person without understanding; liability for necessaries**

**Comment.** Section 38 restates former Civil Code Section 38 without substantive change.

**§ 39 (added). Conveyance or contract by person of unsound mind before adjudged incapable**

**Comment.** Section 39 restates former Civil Code Section 39 without substantive change.

**§ 40 (added). Person of unsound mind adjudged incapable**

**Comment.** Section 40 continues former Civil Code Section 40 without substantive change.

**§ 41 (added). Civil liability of person of unsound mind**

**Comment.** Section 41 continues former Civil Code Section 41 without substantive change insofar as former Section 41 related to a person of unsound mind.

**Civ. Code § 43.1 (added). Child conceived but not yet born**

**Comment.** Section 43.1 continues the first part of former Civil Code Section 29 without substantive change. See also Code Civ. Proc. § 340.4 (statute of limitations for injury before birth).

**Civ. Code § 56.30 (technical amendment). Exemptions from confidentiality of Medical Information Act**

**Comment.** Subdivision (d) of Section 56.30 is amended to substitute references to the Family Code provisions that replace the former Civil Code provisions.

**Civ. Code § 687 (amended). Community property**

**Comment.** Section 687 is amended to adopt the definition of community property provided by Section 65 of the Family Code. Part 2 (commencing with Section 760) of Division 4 of the Family Code contains detailed rules that determine whether property is community or separate property.

**Civ. Code § 1102.1 (technical amendment). Disclosures on transfer of residential property**

**Comment.** Subdivision (g) of Section 1102.1 is amended to substitute "judgment" for "decree" to conform to the terminology of the Family Code.

**Civ. Code § 1557 (repealed). Capacity of minors and persons of unsound mind to contract**

**Comment.** Section 1557 is restated in new Section 1557 without substantive change.

**Civ. Code § 1557 (added). Capacity of minors and persons of unsound mind to contract**

**Comment.** Section 1557 restates former Section 1557 without substantive change.

**Civ. Code § 1799.98 (technical amendment). Bona fide purchaser of property sold pursuant to enforcement of security interest**

**Comment.** Section 1799.98 is amended to substitute references to the Family Code provisions that replace the former Civil Code provisions.

**Civ. Code § 1812.30 (technical amendment). Denial of credit**

**Comment.** Section 1812.30 is amended to add a reference to "family" support in subdivision (h) and to replace the reference to Civil Code provisions in subdivision (i) with a reference to the Family Code.

**CODE OF CIVIL PROCEDURE**

**Code Civ. Proc. § 124 (technical amendment). Court hearings to be public**

**Comment.** Section 124 is amended to substitute a reference to a Family Code that replaced the former Civil Code provisions. Family Code Section 214 gives the court general authority to direct that the trial of any issue of fact joined in a proceeding under the Family Code be private and to exclude all persons except the officers of the court, the parties, their witnesses, and counsel. Section 124 also recognizes that other provisions of law may qualify the rule stated in Section 124 or provide a contrary rule.

Other provisions of the Family Code may provide more restrictive rules that prevail over the rule stated in Family Code Section 214 or may provide special rules concerning exclusion of the public from hearings under the Family Code that prevail over the general rule stated in Section 214. See Family Code § 214 Comment.

**Code Civ. Proc. § 128 (technical amendment). Powers and duties of courts**

**Comment.** Subdivision (e)(2) of Section 128 is amended to substitute a reference to the Family Code provisions that replace the former Civil Code provisions.

**Code Civ. Proc. § 259 (technical amendment). Powers of court commissioners**

**Comment.** Subdivision (f) of Section 259 is amended to conform to the language of the Family Code.

**Code Civ. Proc. § 263 (repealed). Domestic relations investigator**

**Comment.** Former Section 263 is replaced by Family Code Sections 3110-3113.

**Code Civ. Proc. § 340.4 (added). Statute of limitations for action by minor for personal injuries sustained before or during birth**

**Comment.** Section 340.4 continues the last part of former Civil Code Section 29 without substantive change.

**Code Civ. Proc. § 395 (amended). Venue**

**Comment.** Subdivision (a) of Section 395 is amended to substitute a reference to the Family Code provision that replaced the former Civil Code provisions. The part of the fourth sentence of subdivision (a) relating to an action to determine parental relations has been deleted because it was inconsistent with and in effect replaced by Family Code Section 7620(b).

**Code Civ. Proc. § 396b (technical amendment). Transfer**

**Comment.** Subdivision (c) of Section 396b is amended to conform to the language of the Family Code.

**Code Civ. Proc. § 397 (amended). Changing place of trial**

**Comment.** The subdivisions of Section 397 are redesignated and subdivision (e) is amended to more closely conform to the language of Sections 259(f) and 396b(c).

**Code Civ. Proc. § 412.21 (repealed). Temporary restraining orders in summons**

**Comment.** Former Section 412.21 is continued without substantive change in Part 3 (commencing with Section 231) of Division 2 of the Family Code and Family Code Sections 2030 and 7700.

**Code Civ. Proc. § 429.10 (repealed). Facts required in petition for dissolution of marriage**

**Comment.** Former Section 429.10 is continued in Family Code Section 2330(b) without substantive change, except that the new section is also applicable to a legal separation proceeding.



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**Code Civ. Proc. § 429.40 (repealed). Application to proceedings under Family Code**

**Comment.** Section 429.40 is repealed because it is no longer necessary. This title formerly contained Sections 429.10 (now Family Code Section 2330(b)) and 429.20 (repealed by 1977 Cal. Stat. ch. 676, § 1). Section 429.40 was included in the title to make clear that Sections 419.10 and 429.20 did not limit the authority of the Judicial Council to provide by rule for the practice and procedure under the former Family Law Act. See the Legislative Committee Comment to Section 429.40 (1991 Addition). The Judicial Council has authority to prescribe rules governing the practice and procedure in proceedings under the Family Code. See Family Code § 211 & Comment; see also Family Code § 210 (applicability of general rules of practice and procedure to proceedings under Family Code).

**Code Civ. Proc. § 527 (technical amendment). Injunctions and temporary restraining orders**

**Comment.** Section 527 is amended to delete provisions that applied only to orders described in Family Code Section 240, those orders now being governed by Part 4 (commencing with Section 240) of Division 2 of the Family Code, not by this section.

The provision formerly in subdivision (b) of Section 527 is continued in Family Code Section 245. The new language in subdivision (b) makes clear that the section does not apply to an order described in Family Code Section 240. The provisions of Section 527 that applied to the orders described in Family Code Section 240 have been duplicated in Part 4 (commencing with Section 240) of Division 2 of the Family Code.

**Code Civ. Proc. § 527.6 (technical amendment). Temporary restraining order and injunction prohibiting harassment**

**Comment.** New subdivision (f) of Section 527.6 continues the substance of former Civil Code Section 4351.6 insofar as it applied to a proceeding under Section 527.6. Subdivisions designations have been adjusted for the insertion of new subdivision (f).

New subdivision (k) is amended to substitute a reference to the Family Code provisions that replace the former Civil Code and Code of Civil Procedure provisions.

**Code Civ. Proc. § 529 (technical amendment). Undertaking when injunction granted**

**Comment.** Subdivision (b) of Section 529 is amended to substitute a reference to the Family Code provision that replaced the former Civil Code provisions.

**Code Civ. Proc. § 583.161 (technical amendment). Dismissal of petition for dissolution or legal separation**

**Comment.** Section 583.161 is amended to substitute references to the Family Code provisions that replace the former Civil Code provisions and to conform it to Family Code Section 3601.

**Code Civ. Proc. § 664.5 (technical amendment). Notice of entry of judgment**

**Comment.** Section 664.5 is amended to delete references former Civil Code provisions. The reference to a proceeding for "summary dissolution" is omitted from Section 664.5 as unnecessary, since summary dissolution is included under the language "dissolution of marriage" used in the amended section. See Chapter 5 (commencing with Section 2400) of Part 3 of Division 6 of the Family Code.

**Code Civ. Proc. § 674 (amended). Abstract of judgment or decree**

**Comment.** Section 674 is amended to delete subdivisions (b) and (c) which are continued without substantive change in Family Code Section 4506 and to make conforming revisions.

**Code Civ. Proc. § 680.145 (added). "Child support"**

**Comment.** Section 680.145 is a new provision that is consistent with Family Code Section 4501 (family support order enforceable in same manner and to same extent as child support order).

**Code Civ. Proc. § 683.130 (technical amendment). Application for renewal of judgment**

**Comment.** Subdivision (d) of Section 683.130 is amended to substitute a reference to the Family Code provisions that replace the former Civil Code Section 4383. The last sentence of Section 683.130 — now subdivision (e)— is amended to make clear that it applies to child, family, and spousal support judgments. Subdivision (e) supersedes the last sentence of former Civil Code Section 4384.5 which provided the same rule as to child and spousal support.

**Code Civ. Proc. § 683.310 (technical amendment). Judgments under Family Code**

**Comment.** Section 683.310 is amended to substitute "a judgment or order made or entered pursuant to the Family Code" for the former reference to the Family Law Act. Family Code Section 4502 provides that a judgment for child, family, or spousal support may be renewed in the manner specified in Article 2 (commencing with Section 683.110) of Chapter 3 of Title 9 of Part 2 of the Code of Civil Procedure. The methods of enforcement of a judgment or order made or entered pursuant to the Family Code are prescribed by Family Code Sections 290 and 291.

**Code Civ. Proc. § 684.010 (technical amendment). Notice to attorney of record**

**Comment.** Section 684.010 is amended to substitute a reference to the Family Code section that replaced Civil Code Section 4809.

**Code Civ. Proc. § 695.020 (technical amendment). Community property**

**Comment.** Subdivision (a) of Section 695.020 is amended to substitute a reference to the Family Code which replaced the former Civil Code provisions.

**Code Civ. Proc. § 697.320 (technical amendment). Judgment lien for installments under support judgment or against health care provider**

**Comment.** Subdivision (a)(1) of Section 697.320 is amended to make clear that Section 697.320 applies to a judgment for family support. See Family Code § 4501 (family support order is enforceable in same manner and to same extent as child support order). See also Section 680.145 ("child support" includes family support).

**Code Civ. Proc. § 699.510 (technical amendment). Issuance of writ of execution**

**Comment.** Subdivision (b) of Section 699.510 is revised to substitute references to the Family Code provisions that replaced the former Civil Code provisions.

**Code Civ. Proc. § 699.560 (technical amendment). Return of writ of execution**

**Comment.** Subdivision (c) of Section 699.560 is amended to substitute a reference to the Family Code section that replaced former Civil Code Section 4383.

**Code Civ. Proc. § 703.070 (technical amendment). Exemptions under judgment for child, family, or spousal support**

**Comment.** Section 703.070 is amended to add references to "family" support. See Family Code § 4501 (family support order enforceable in same manner and to same extent as child support order). See also Section 680.145 ("child support" includes family support).

**Code Civ. Proc. § 704.070 (technical amendment). Paid earnings**

**Comment.** Section 704.070 is amended to conform to the terminology of the Family Code. See Chapter 6 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code (earnings assignment order for support).

**Code Civ. Proc. § 704.110 (technical amendment). Public retirement benefits**

**Comment.** Section 704.110 is amended to conform to the terminology of the Family Code. See Chapter 6 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code (earnings assignment order for support). See Family Code § 4501 (family support order enforceable in same manner

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and to same extent as child support order). See also Section 680.145 ("child support" includes family support).

**Code Civ. Proc. § 704.113 (technical amendment). Vacation credits**

**Comment.** Subdivision (c) of Section 704.113 is amended to conform to Section 706.011(b).

**Code Civ. Proc. § 704.114 (technical amendment). Service of assignment on public entity**

**Comment.** Section 704.114 is amended to substitute references to the Family Code provisions that replaced the former Civil Code provisions. "Earnings assignment order for support" is defined in Section 706.011.

**Code Civ. Proc. § 704.115 (technical amendment). Private retirement plans**

**Comment.** Subdivision (c) of Section 704.115 is amended to conform to the terminology of the Family Code. See Chapter 6 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code (earnings assignment order for support). See Family Code § 4501 (family support order enforceable in same manner and to same extent as child support order). See also Section 680.145 ("child support" includes family support).

**Code Civ. Proc. § 704.120 (technical amendment). Unemployment benefits and contributions; strike benefits**

**Comment.** Subdivision (e) of Section 704.120 is amended to conform to the terminology of the Family Code. See Chapter 6 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code (earnings assignment order for support).

**Code Civ. Proc. § 704.950 (technical amendment). Judgment lien on real property**

**Comment.** Subdivision (b) of Section 704.950 is amended to make clear that the section applies to a judgment for family support. See Family Code § 4501 (family support order enforceable in same manner and to same extent as child support order). See also Section 680.145 ("child support" includes family support).

**Code Civ. Proc. § 706.011 (technical amendment). Definitions**

**Comment.** Section 706.011 is amended to conform to the terminology of the Family Code and to substitute references to the Family Code provisions that replaced the former Civil Code provisions. See Chapter 6 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code (earnings assignment order for support). The term "wage assignment for support" in former subdivision (g) is replaced by "earnings assignment for support" in new subdivision (b), and other subdivisions have been redesignated to keep the definitions in alphabetical order.

**Code Civ. Proc. § 706.020 (technical amendment). Withholding earnings**

**Comment.** Section 706.020 is amended to conform to the terminology of the Family Code. See Chapter 6 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code (earnings assignment order for support). "Earnings assignment order for support" is defined in Section 706.011.

**Code Civ. Proc. § 706.031 (technical amendment). Earnings assignment order for support**

**Comment.** Section 706.031 is amended to conform to the terminology of the Family Code. See Chapter 6 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code (earnings assignment order for support). "Earnings assignment order for support" is defined in Section 706.011.

**Code Civ. Proc. § 706.052 (technical amendment). Earnings assignment order for support**

**Comment.** Subdivision (a) of Section 706.052 is amended to conform to the terminology of the Family Code. See Chapter 6 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code (earnings assignment order for support). "Earnings assignment order for support" is defined in Section 706.011.

**Code Civ. Proc. § 706.124 (technical amendment). Judgment debtor's financial statement**

**Comment.** Subdivision (b) of Section 706.124 is amended to conform to the terminology of the Family Code. See Chapter 6 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code (earnings assignment order for support). "Earnings assignment order for support" is defined in Section 706.011.

**Code Civ. Proc. § 706.126 (technical amendment). Employer's return**

**Comment.** Subdivision (b)(5) of Section 706.126 is amended to conform to the terminology of the Family Code. See Chapter 6 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code (earnings assignment order for support). "Earnings assignment order for support" is defined in Section 706.011.

**Code Civ. Proc. § 708.510 (technical amendment). Assignment of right to payment**

**Comment.** Subdivision (c)(2) of Section 708.510 is amended to make clear that the court is to take into consideration any earnings assignment order for support. "Earnings assignment order for support" is defined in Section 706.011.

**Code Civ. Proc. § 708.730 (technical amendment). Money owed by public agency**

**Comment.** Section 708.730 is amended to delete the phrase "or decree" which was used in several places in the section. See Section 680.230 (defining "judgment" to include decree).

**Code Civ. Proc. § 724.250 (technical amendment). Child and spousal support**

**Comment.** Subdivision (b) of Section 724.250 is amended to substitute a reference to the Family Code provisions that replaced former Civil Code Section 4702.

**Code Civ. Proc. § 904.1 (technical amendment). Appealable judgments and orders**

**Comment.** Subdivision (j) of Section 904.1 is amended to substitute a reference to the Family Code for the former reference to the Family Law Act.

**Code Civ. Proc. § 917.7 (amended). Stay of proceedings**

**Comment.** Section 917.7 is amended to substitute a reference to the Family Code for the former reference to Civil Code Section 4359. For provisions of the Family Code relating to the temporary exclusion of a party from the family dwelling or the dwelling of the other party, see, e.g., Family Code §§ 2035-2043, 2045, 5550, 5551, 5600-5807, 7710-7722, 7750.

**Code Civ. Proc. § 1006.5 (technical amendment). Appearance of counsel by telephone**

**Comment.** Subdivision (b) of Section 1006.5 is amended to substitute a reference to the Family Code for the former reference to the Family Law Act. The effect of this substitution is to extend the exception under subdivision (b) to include provisions of the Family Code that were not part of the former Family Law Act.

**Code Civ. Proc. § 1209.5 (technical amendment). Noncompliance with order for support of child as contempt**

**Comment.** Section 1209.5 is amended to make clear that it applies to an order directed to a mother as well as to a father. This is not a substantive change. See Code Civ. Proc. § 17 (masculine gender includes the feminine).

**Code Civ. Proc. § 1219 (technical amendment). Punishment for contempt**

**Comment.** Subdivision (d)(2)(B) of Section 1219 is amended to substitute references to the Family Code provisions that replaced the former Civil Code provisions.

**Code Civ. Proc. § 1276 (technical amendment). Petition for change of name**

**Comment.** Section 1276 is amended to substitute a reference to the Family Code provision that replaced former Civil Code Section 7007(d).

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**Code Civ. Proc. § 1277 (technical amendment). Notice of application for change of name**

**Comment.** Subdivision (b) of Section 1277 is amended to substitute the new reference to the Uniform Parentage Act in the Family Code.

**Code Civ. Proc. § 1278 (technical amendment). Hearing and order without hearing in change of name**

**Comment.** Subdivision (b) of Section 1278 is amended to substitute the new reference to the Uniform Parentage Act in the Family Code.

**Code Civ. Proc. § 1279.5 (amended). Common law right to change name not abrogated**

**Comment.** Former subdivision (b) of Section 1279.5 is continued in Section 1279.6 without substantive change.

**Code Civ. Proc. § 1279.6 (added). Refusal to do business with woman who uses her birth name or former name**

**Comment.** Section 1279.6 continues without substantive change former subdivision (b) of Code of Civil Procedure Section 1279.5, former Civil Code Section 4362(d), and former Civil Code Section 4457(d).

**Code Civ. Proc. § 1710.10 (technical amendment). Sister state money judgments**

**Comment.** Subdivision (c) of Section 1710.10 is amended to substitute a reference to the Family Code provision that replaced former Civil Code Section 1653(k).

**Code Civ. Proc. § 2032 (technical amendment). Physical or mental examinations**

**Comment.** Subdivision (b) of Section 2032 is amended to substitute the new reference to the Uniform Act on Blood Tests to Determine Paternity in the Family Code.

## CORPORATIONS CODE

**Corp. Code § 420 (technical amendment). Immunity from liability of corporation, transfer agent, or registrar**

**Comment.** Subdivision (e) of Section 420 is amended to substitute a reference to the Family Code provisions that replaced former Civil Code Section 5125.

## EDUCATION CODE

**Educ. Code § 22401.6 (technical amendment). Applications for benefits; spousal signature**

**Comment.** Section 22401.6 is amended to substitute references to the Family Code provisions that replaced the former Civil Code provisions.

Chapter 6 (commencing with Section 5133) of Title 8 of Part 5 of Division 4 of the Civil Code, which was referred to in Section 22401.6, was repealed. See 1985 Cal. Stat. ch. 1315, § 2. The repealed provisions were replaced by the provisions that are now compiled as Part 5 (commencing with Section 1500) of Division 4 of the Family Code. See 1985 Cal. Stat. ch. 1315, § 3, enacting former Title 11 (commencing with Section 5200) of Part 5 of Division 4 of the Civil Code. Accordingly, a reference to Part 5 (commencing with Section 1500) of Division 4 of the Family Code has been substituted for the former reference to Chapter 6 (commencing with Section 5133) of Title 8 of Part 5 of Division 4 of the Civil Code.

**Educ. Code § 22662 (technical amendment). Determination of community property rights in retirement allowance**

**Comment.** The introductory paragraph of Section 22662 is amended to substitute a reference to the Family Code provision that replaced former Civil Code provision. The former reference in Section 22662

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to Civil Code Section 4800.8(c) (Public Employees' Retirement System) appears to have been in error. The reference should have been to Section 4800.8(d) (State Teachers' Retirement System).

**Educ. Code § 23702 (technical amendment). Designation of beneficiary; revocation**

**Comment.** Section 23702 is amended to substitute a reference to the Family Code provision that replaced former Civil Code Section 4800.8.

**Educ. Code § 24603 (technical amendment). State Teachers' Retirement System**

**Comment.** Section 24603 is amended to substitute a reference to the Family Code provisions that replaced former Civil Code Sections 5105 and 5125.

EVIDENCE CODE

**Evid. Code § 621 (repealed). Motion for blood tests**

**Comment.** Former Section 621 is continued without substantive change in Family Code Sections 7500 and 7501. The second sentence of subdivision (f) is omitted as obsolete.

**Staff Note.** This repealer is in AB 2650.

**Evid. Code § 1037.7 (technical amendment). Domestic violence**

**Comment.** Subdivision (d) of Section 1037.7 is amended to substitute the new reference to the Uniform Parentage Act in the Family Code.

**Evid. Code § 1107 (technical amendment). Expert testimony regarding battered women's syndrome**

**Comment.** Subdivision (c) of Section 1107 is amended to substitute references to the provisions of the Family Code that replaced the relevant provisions of Code of Civil Procedure Section 542.

**Evid. Code § 1152.5 (technical amendment). Mediation**

**Comment.** Subdivision (d) of Section 1152.5 is amended to substitute a reference to the Family Code provisions that replaced the former provisions of the Civil Code and Code of Civil Procedure.

GOVERNMENT CODE

**Gov't Code § 21204 (technical amendment). Designation of beneficiary**

**Comment.** Section 21204 is amended to substitute a reference to the Family Code provision that replaced former Civil Code Section 4800.8.

**Gov't Code § 21209 (technical amendment). Notice to spouse of member's selection of benefits or change of beneficiary**

**Comment.** Subdivision (f) of Section 21209 is amended to substitute a reference to the Family Code provisions that replaced the former Civil Code provisions.

Chapter 6 (commencing with Section 5133) of Title 8 of Part 5 of Division 4 of the Civil Code, which was referred to in Section 21209, was repealed. See 1985 Cal. Stat. ch. 1315, § 2. The repealed provisions were replaced by the provisions that are now compiled as Part 5 (commencing with Section 1500) of Division 4 of the Family Code. See 1985 Cal. Stat. ch. 1315, § 3, enacting former Title 11 (commencing with Section 5200) of Part 5 of Division 4 of the Civil Code. Accordingly, a reference to Part 5 (commencing with Section 1500) of Division 4 of the Family Code has been substituted for the former reference to Chapter 6 (commencing with Section 5133) of Title 8 of Part 5 of Division 4 of the Civil Code.

**Gov't Code § 21209.3 (technical amendment). Refund of member's contributions or election of optional settlement and beneficiary designation**

**Comment.** Subdivision (e) of Section 21209.3 is amended to substitute a reference to the Family Code provisions that replaced the former Civil Code provisions.

Chapter 6 (commencing with Section 5133) of Title 8 of Part 5 of Division 4 of the Civil Code, which was referred to in Section 21209.3, was repealed. See 1985 Cal. Stat. ch. 1315, § 2. The repealed

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provisions were replaced by the provisions which are now compiled as Part 5 (commencing with Section 1500) of Division 4 of the Family Code. See 1985 Cal. Stat. ch. 1315, § 3, enacting former Title 11 (commencing with Section 5200) of Part 5 of Division 4 of the Civil Code. Accordingly, a reference to Part 5 (commencing with Section 1500) of Division 4 of the Family Code has been substituted for the former reference to Chapter 6 (commencing with Section 5133) of Title 8 of Part 5 of Division 4 of the Civil Code.

**Gov't Code § 21210 (technical amendment). Public Employees' Retirement Law**

**Comment.** Section 21210 is amended to substitute a reference to the Family Code provisions that replaced former Civil Code Sections 5105 and 5125.

**Gov't Code § 21215 (technical amendment). Dissolutions or legal separations; accounts for accumulated contributions and service credits**

**Comment.** Subdivision (b) of Section 21215 is amended to substitute a reference to the Family Code provision that replaced former Civil Code Section 4800.8.

**Gov't Code § 26832 (technical amendment). Certified copy of marriage dissolution record**

**Comment.** Section 26832 is amended to substitute a reference to the Family Code provision that replaced former Civil Code Section 5183.

**Gov't Code § 26833.5 (technical amendment). Certified copies of order under certain domestic relations laws**

**Comment.** Section 26833.5 is amended to substitute references to the Family Code provisions that replace the former Civil Code and Code of Civil Procedure provisions.

**Gov't Code § 26840.1 (technical amendment). Marriage certificate**

**Comment.** Subdivisions (a) of Section 26840.1 is amended to substitute references to the Family Code provisions that replaced the former Civil Code provisions.

**Gov't Code § 26840.3 (amended). Fee increase to support family conciliation court and mediation services**

**Comment.** Section 26840.3 is amended to substitute references to the Family Code provisions that replaced the former Civil Code provisions. Subdivision (a)(1) is further amended to consolidate the fee increase provisions, making unnecessary the former reference to "the mediation services required by the amendments to Section 4351.5 of the Civil Code enacted by the 1983-84 Regular Session of the Legislature."

**Gov't Code § 26840.8 (technical amendment). Marriage authorization**

**Comment.** Section 26840.8 is amended to substitute references to the Family Code provisions that replaced the former Civil Code provisions.

**Gov't Code § 26841 (technical amendment). Fees for protective order**

**Comment.** Section 26841 is amended to substitute references to the Family Code provisions that replaced the former Civil Code provisions.

**Gov't Code § 26861 (technical amendment). Performance of marriage**

**Comment.** Section 26861 is amended to substitute a reference to the Family Code provision that replaced former Civil Code Section 4205.1.

**Gov't Code § 27752 (technical amendment). Financial evaluations and collections**

**Comment.** Section 27752 is amended to substitute a reference to the Family Code provisions that replaced former Civil Code Section 4602.

**Gov't Code § 31760.3 (technical amendment). Notice to spouse of member's selection of benefits or change of beneficiary**

**Comment.** Subdivision (f) of Section 31760.3 is amended to substitute a reference to the Family Code provisions that replaced the former Civil Code provisions.

Chapter 6 (commencing with Section 5133) of Title 8 of Part 5 of Division 4 of the Civil Code, which was referred to in Section 31760.3, was repealed. See 1985 Cal. Stat. ch. 1315, § 2. The repealed provisions were replaced by the provisions that are now compiled as Part 5 (commencing with Section 1500) of Division 4 of the Family Code. See 1985 Cal. Stat. ch. 1315, § 3, enacting former Title 11 (commencing with Section 5200) of Part 5 of Division 4 of the Civil Code. Accordingly, a reference to Part 5 (commencing with Section 1500) of Division 4 of the Family Code has been substituted for the former reference to Chapter 6 (commencing with Section 5133) of Title 8 of Part 5 of Division 4 of the Civil Code.

**Gov't Code § 68514 (technical amendment). Report of Administrative Office of Courts**

**Comment.** Section 68514 is amended to add a reference to the Family Code provisions that will replace the listed Civil Code provisions.

**Gov't Code § 75050 (technical amendment). Judges' retirement benefits**

**Comment.** Subdivision (b) of Section 75050 is amended to substitute a reference to the Family Code provision that replaced former Civil Code Section 4800.8.

**Gov't Code § 77003 (technical amendment). "Court operations"**

**Comment.** Section 77003 is amended to substitute a reference to the Family Code provisions that replaced former Civil Code Section 4606.

**HEALTH & SAFETY CODE**

**Health & Safety Code § 1522.4 (technical amendment). Community care facilities**

**Comment.** Subdivision (c) of Section 1522.4 is amended to substitute references to the Family Code provisions that replaced the former Civil Code provisions.

**Health & Safety Code § 10125.5 (technical amendment). Confidentiality of certificate of live birth**

**Comment.** Subdivision (a)(6) of Section 10125.5 is amended to substitute references to the Family Code provisions that replaced the former Civil Code provisions.

**Health & Safety Code § 10125.6 (technical amendment). Notice to mother of newborn**

**Comment.** Subdivision (a) of Section 10125.6 is amended to substitute references to the Family Code provisions that replaced the former Civil Code provisions.

**Health & Safety Code § 10351 (technical amendment). Marriages of members of religious society or denomination**

**Comment.** Section 10351 is amended to substitute references to the Family Code provisions that replaced the former Civil Code provisions.

**Health & Safety Code § 10433.2 (technical amendment). Inclusion of name of deceased adopting parent**

**Comment.** Section 10433.2 is amended to substitute a reference to the Family Code provision that replaced former Civil Code Section 221.72.

**Health & Safety Code § 10433.3 (technical amendment). Additional amended record**

**Comment.** Section 10433.3 is amended to substitute a reference to the Family Code provision that replaced former Civil Code Section 221.72.



## FAMILY CODE CONFORMING REVISIONS

### **Health & Safety Code § 10605 (technical amendment). Certified copies**

**Comment.** Subdivision (c) of Section 10605 is amended to substitute a reference to the Family Code provision that replaced former Civil Code Section 5183.

## INSURANCE CODE

### **Ins. Code § 10172 (technical amendment). Life insurance**

**Comment.** Section 10172 is amended to substitute a reference to the Family Code provisions that replaced former Civil Code Sections 5105 and 5125.

## LABOR CODE

### **Lab. Code § 300 (technical amendment). Assignment of wages**

**Comment.** Subdivision (a) of Section 300 is amended to substitute a reference to the Family Code provisions that replaced the former Civil Code provisions. Sections 4701 and 4801.6 were repealed by 1989 Cal. Stat. ch. 1359, which enacted Civil Code Sections 4390-4390.19 in their place. Civil Code Sections 4390-4390.19 were replaced by Family Code Section 5200 *et seq.*

## PENAL CODE

### **Penal Code § 70.5 (technical amendment). Acceptance of fees or gratuities by commissioner of civil marriages**

**Comment.** Section 70.5 is amended to substitute a reference to the Family Code provision that replaced former Civil Code Section 4205.1.

### **Penal Code § 208 (technical amendment). Kidnapping**

**Comment.** Subdivision (b) of Section 208 is amended to substitute a reference to the Family Code provision that replaced former Civil Code Section 7004(a).

### **Penal Code § 270c (technical amendment). Failure of child to support indigent parent**

**Comment.** Section 270c is amended to substitute a reference to the Family Code provisions that replaced former Civil Code Section 206.5.

### **Penal Code § 270h (technical amendment). Support order included in order granting probation**

**Comment.** The first sentence of subdivision (b) of Section 270h is amended to substitute a reference to the Family Code provisions that replaced the former Civil Code provisions. The second sentence of subdivision (b) is amended to add a reference to the Family Code provisions that replace the former Civil Code provisions. The terminology used in subdivision (b) has been revised to conform to the terminology of the Family Code. See Family Code § 5208 ("earnings assignment order for support").

### **Penal Code § 273.5 (technical amendment). Willful injury to spouse or others**

**Comment.** Subdivision (d) of Section 273.5 is amended to substitute a reference to the Family Code provisions that replaced former Civil Code Section 7004.

### **Penal Code § 273.6 (technical amendment). Willful violation of court order**

**Comment.** Subdivision (a) of Section 273.6 is amended to substitute references to the Family Code provisions that replaced the former Civil Code and Code of Civil Procedure provisions.

### **Penal Code § 277 (technical amendment). Child concealment**

**Comment.** Subdivisions (a)(2) of Section 277 is amended to substitute the new reference to the Uniform Parentage Act in the Family Code.

**Penal Code § 279 (technical amendment). Protective custody of child**

**Comment.** Subdivision (b) of Section 279 is amended to substitute the new reference to the Uniform Child Custody Jurisdiction Act in the Family Code. Subdivision (d) is amended to substitute a reference to the Family Code provision that replaced former Civil Code Section 4605. Subdivision (f)(1) is amended to substitute a reference to the Family Code provision that replaced former Civil Code Section 197.

**Penal Code § 280 (technical amendment). Concealment or removal of child in adoption proceeding**

**Comment.** Section 280 is amended to substitute references to the Family Code provisions that replaced the former Civil Code provisions.

**Penal Code § 360 (technical amendment). Solemnizing marriage without license**

**Comment.** Section 360 is amended to substitute references to the Family Code provisions that replaced the former Civil Code provisions.

**Penal Code § 2625 (technical amendment). Proceeding affecting prisoner's parental or marital rights**

**Comment.** Section 2625 is amended to substitute references to the Family Code provisions that replaced the former Civil Code provisions. The word "proceeding" has been substituted for "action" in various places in this section for consistency with the Family Code. See, e.g., Family Code § 7802 ("proceeding" to have minor child declared free from custody and control of either or both parents).

**Penal Code § 11105.3 (technical amendment). Record of conviction for sex crimes, drug crimes, or crimes of violence**

**Comment.** Subdivision (c) of Section 11105.3 is amended to substitute a reference to the Family Code provisions that replaced former Civil Code Section 226.55. The fingerprinting and criminal record provisions in former Civil Code Section 226.55 were replaced by former Civil Code Section 222.40, 222.49, and 226.30. See 1990 Cal. Stat. ch. 1363, § 2.

**Penal Code § 11167 (technical amendment). Report; contents**

**Comment.** Subdivision (d) of Section 11167 is amended to substitute a reference to the Family Code provisions that replaced former Civil Code Section 232.

**Penal Code § 11170 (technical amendment). Indexed reports**

**Comment.** Subdivision (b)(3) of Section 11170 is amended to substitute references to the Family Code provisions that replaced the former Civil Code provisions.

**Penal Code § 12021 (amended). Firearms**

**Comment.** Subdivision (g) of Section 12021 is amended to substitute references to the Family Code provisions that replaced the former Civil Code provisions. The former reference to the Code of Civil Procedure is replaced by a reference to Family Code Section 5516, which requires the court to give the respondent notice that the respondent is prohibited from purchasing or receiving or attempting to purchase or receive a firearm, including a notice of the penalty for violation.

**Penal Code § 12025.5 (technical amendment). Justifiable violations of Section 12025**

**Comment.** Section 12025.5 is amended to substitute references to the Family Code provisions that replaced the former Civil Code provisions, and to include similar mutual restraining orders issued under other domestic violence provisions. The word "mutual" has been substituted for "reciprocal" to conform to the terminology of the Family Code provisions.

**Penal Code § 12028.5 (technical amendment). Custody of firearm or other deadly weapon**

**Comment.** Subdivision (a)(2)(B) of Section 12028.5 is amended to substitute the new reference to the Uniform Parentage Act in the Family Code.

FAMILY CODE CONFORMING REVISIONS

**Penal Code § 12031 (technical amendment). Carrying loaded firearms; misdemeanor; punishment; exceptions**

**Comment.** Subdivision (j)(2) of Section 12031 is amended to substitute a reference to the Family Code provisions that replaced former Civil Code Section 4359 and to include similar mutual restraining orders issued under other domestic violence provisions. The word "mutual" has been substituted for "reciprocal" to conform to the terminology of the Family Code provisions.

**Penal Code § 12076 (technical amendment). Register of firearm sales**

**Comment.** Paragraphs (5) and (6) of Section 12076(d) are amended to substitute references to the Family Code provisions that replaced former Code of Civil Procedure Section 550(b).

PROBATE CODE

**Prob. Code § 104 (technical amendment). Community property held in revocable trust**

**Comment.** Section 104 is amended to substitute a reference to the Family Code provision that replaced former Civil Code Section 5110.150.

**Prob. Code § 143 (technical amendment). Enforceability**

**Comment.** Subdivision (b) of Section 143 is amended to substitute a reference to the Family Code provision that replaced former Civil Code Section 5103.

**Prob. Code § 144 (technical amendment). Enforceability under certain circumstances**

**Comment.** Subdivisions (a)(2) and (c) of Section 144 are amended to substitute references to the Family Code provision that replaced former Civil Code Section 5103.

**Prob. Code § 146 (technical amendment). Agreement; requirements**

**Comment.** Subdivision (h) of Section 146 is amended to substitute a reference to the Family Code provision that replaced former Civil Code Section 5103.

**Prob. Code § 1514 (technical amendment). Appointment of guardian**

**Comment.** Subdivision (b) of Section 1514 is amended to substitute references to the Family Code provisions that replaced the former Civil Code provision.

**Prob. Code § 1901 (technical amendment). Order respecting capacity**

**Comment.** Subdivision (a) of Section 1901 is amended to substitute references to the Family Code provisions that replaced the former Civil Code provisions.

**Prob. Code § 3002 (technical amendment). Community property**

**Comment.** Section 3002 is amended to substitute a reference to the Family Code provision that replaced former Civil Code Section 5110.150.

**Prob. Code § 3057 (technical amendment). Protection of rights of spouse lacking legal capacity**

**Comment.** Section 3057 is amended to substitute a reference to the relevant Family Code provisions in place of the former reference to the "duty of good faith." The relevant provisions of the Civil Code, now compiled in the Family Code, were amended in 1991 to replace the "duty of good faith" with "the general rules governing fiduciary relationships which control the actions of persons having relationships of personal confidence as specified in Section 721" of the Family Code. See Section 1110 of the Family Code.

**Prob. Code § 3071 (technical amendment). Satisfaction of joinder or consent requirement where spouse lacks legal capacity**

**Comment.** Subdivision (a) of Section 3071 is amended to substitute a reference to the Family Code provisions that replaced former Civil Code Sections 5125 and 5127.

COMMENTS TO AB 2641

**Prob. Code § 3072 (technical amendment). Joinder or consent by conservator**

**Comment.** Subdivision (b) of Section 3072 is amended to substitute a reference to the Family Code provision that replaced former Civil Code Section 5125.

**Prob. Code § 3073 (technical amendment). Manner of joinder or consent**

**Comment.** Subdivision (a) of Section 3073 is amended to substitute a reference to the Family Code provisions that replaced former Civil Code Sections 5125 and 5127.

**Prob. Code § 3088 (technical amendment). Application of income and principal for support and maintenance**

**Comment.** Subdivisions (e) of Section 3088 is amended to substitute a reference to the Family Code provisions that replaced the former Civil Code provision. Section 4701 was repealed by 1989 Cal. Stat. ch. 1359, which enacted Civil Code Sections 4390-4390.19. Civil Code Sections 4390-4390.19 were replaced by Family Code Section 5200 *et seq.*

Other amendments are made in subdivisions (e) and (g) to conform to the terminology of the Family Code.

**Prob. Code § 3301 (repealed). Consent for hospital or medical care or enlistment in armed services**

**Comment.** Former Section 3301 is continued in Family Code Sections 200, 6911, and 6950 without substantive change.

**Staff Note.** This repealer is in AB 2650.

**Prob. Code § 3302 (repealed). Contract for attorney's fees**

**Comment.** Former Section 3302 is continued in Family Code Section 6602 without substantive change.

**Staff Note.** This repealer is in AB 2650.

**Prob. Code § 5305 (technical amendment). Presumption that married persons hold their funds in deposit account as community property**

**Comment.** Subdivision (b) of Section 5305 is amended to substitute references to the Family Code provisions that replaced the former Civil Code provisions.

**Prob. Code § 6408 (technical amendment). Relationship of parent and child**

**Comment.** Subdivision (f)(1) of Section 6408 is amended to substitute the new reference to the Uniform Parentage Act in the Family Code. Subdivisions (f)(2) is amended to substitute a reference to the Family Code provision that replaced former Civil Code Section 7006.

REVENUE & TAXATION CODE

**Rev. & Tax. Code § 11927 (technical amendment). Transfer, division, or allocation between spouses under judgment of dissolution or separation, or agreement in contemplation of judgment or order**

**Comment.** Subdivision (a) of Section 11927 is amended to substitute a reference to the Family Code for the former reference to Part 5 (commencing with Section 4000) of Division 4 of the Civil Code (the Family Law Act). The Family Code includes some provisions that were not included within the former Family Law Act.

VEHICLE CODE

**Veh. Code § 17150.5 (technical amendment). Limitation on civil code presumptions**

**Comment.** Section 17150.5 is amended to substitute a reference to the Family Code provisions that replaced former Civil Code Section 5110.

FAMILY CODE CONFORMING REVISIONS

WELFARE & INSTITUTIONS CODE

**Welf. & Inst. Code § 304 (technical amendment). Custody of dependent child of the court**

**Comment.** Section 304 is amended to substitute references to the Family Code provisions that replaced the former Civil Code provisions. The reference to Family Code Section 2035(c) is added to conform to various provisions of the Family Code. See, e.g., Family Code §§ 5650(b), 5804(a), 5805(a), 5807.

**Welf. & Inst. Code § 361.5 (technical amendment). Child welfare services; reunification of family; adoption assessments**

**Comment.** Subdivision (b)(2) of Section 361.5 is amended to substitute a reference to the Family Code provisions that replaced former Civil Code Section 232.

**Welf. & Inst. Code § 362.4 (technical amendment). Juvenile court order concerning custody or visitation**

**Comment.** Section 362.4 is amended to substitute the new reference to the Uniform Parentage Act in the Family Code. The reference to Family Code Section 2035(c) is added to conform to various provisions of the Family Code. See, e.g., Family Code §§ 5650(b), 5804(a), 5805(a), 5807.

**Welf. & Inst. Code § 366.2 (technical amendment). Status review hearings**

**Comment.** Subdivision (e) of Section 366.2 is amended to substitute a reference to the Family Code provisions that replaced former Civil Code Section 232.

**Welf. & Inst. Code § 366.25 (technical amendment). Permanency planning hearing**

**Comment.** Subdivisions (d) and (j) of Section 366.25 are amended to substitute reference to the Family Code provisions that replaced former Civil Code Section 232.

**Welf. & Inst. Code § 366.26 (technical amendment). Termination of parental rights**

**Comment.** Subdivision (a) of Section 366.26 substitute references to the Family Code provisions that replaced the former Civil Code provisions.

**Welf. & Inst. Code § 11155.5 (technical amendment). Retention of cash savings**

**Comment.** Subdivision (a) Section 11155.5 is amended to substitute a reference to the Family Code provisions that replaced the former Civil Code provisions.

**Welf. & Inst. Code § 11350.1 (technical amendment). Action for support**

**Comment.** Subdivision (b) of Section 11350.1 is amended to substitute a reference to the Family Code for the reference to the former Family Law Act.

**Welf. & Inst. Code § 11475.1 (technical amendment). Action by district attorney to enforce child and spousal support**

**Comment.** Subdivision (e), (h), and (i) of Section 11475.1 are amended to substitute references to the Family Code for references to the former Family Law Act. Subdivision (e) is amended to substitute a reference to the Family Code provision that replaced former Civil Code Section 7004. Subdivision (h) is amended to conform to the terminology of the Family Code. Subdivision (i) is amended to substitute the new reference to the Uniform Parentage Act in the Family Code.

**Welf. & Inst. Code § 11475.3 (repealed). Report concerning compatible family law forms**

**Comment.** Former Section 11475.3 is repealed as obsolete.

**Welf. & Inst. Code § 11476.1 (technical amendment). Agreements with noncustodial parents**

**Comment.** Subdivisions (c), (f), and (g) of Section 11476.1 are amended to substitute references to the Family Code provisions that replaced the former Civil Code provisions.

**Welf. & Inst. Code § 11478 (technical amendment). Cooperation of agencies**

**Comment.** Section 11478 is amended to substitute a reference to the Family Code provisions that replaced former Code of Civil Procedure Section 1650. A reference to the Uniform Reciprocal Enforcement of Support Act, now in the Family Code, has been substituted for the reference to former Code of Civil Procedure Section 1650, which merely provided the short title for the uniform act. The substituted reference in Section 11478 includes the entire uniform act.

**Welf. & Inst. Code § 11478.1 (technical amendment). Confidentiality of records**

**Comment.** Subdivision (a) of Section 11478.1 (added by 1991 Cal. Stat. ch. 943, § 2) is amended to substitute references to the provisions of the Family Code that replace former Section 1650 of the Code of Civil Procedure.

**Welf. & Inst. Code § 11478.2 (technical amendment). Representation by district attorney and attorney general in actions involving paternity or support**

**Comment.** Subdivision (a), (g), and (f)(2) of Section 11478.2 are amended to substitute references to the Family Code provisions that replaced the former Civil Code and Code of Civil Procedure provisions.

**Welf. & Inst. Code § 11478.8 (amended). Request by district attorney for information**

**Comment.** Subdivisions (e) of Section 11478.8 is amended to change the time period from 20 to 30 days. The 30-day period is drawn from former Civil Code Section 4390.16. Former Civil Code Section 4390.16(a) and (c) overlapped Section 11478.8, but Section 11478.8 is broader in scope because it applied to a labor organization as well as to an employer. This duplication caused a problem. The employer was required to provide information within 30 days under former Civil Code Section 4390.16(c), but Section 11478.8 was not amended to increase the time period to 30 days. Section 11478.8 is also amended to insert additional subdivision designations.

**Welf. & Inst. Code § 11489 (technical amendment). Assignment of earnings**

**Comment.** Section 11489 is amended to substitute references to the Family Code provisions that replaced the former Civil Code provisions and to adopt the terminology of the Family Code.

**Welf. & Inst. Code § 11490 (technical amendment). Medical insurance**

**Comment.** Section 11490 is amended to substitute references to the Family Code provisions that replaced the former Civil Code provisions.

**Welf. & Inst. Code § 12300 (technical amendment). Purpose; inclusions; remuneration of persons under a legal duty to provide services; respite care**

**Comment.** Section 12300 is amended to substitute a reference to the Family Code for the former reference to the Civil Code. The provisions of the Civil Code relating to support have been replaced by provisions of the Family Code. See, e.g., Family Code §§ 3900-4414.

**Welf. & Inst. Code § 12350 (technical amendment). Liability of relatives under state supplementary program for aged, blind, and disabled**

**Comment.** Section 12350 is amended to substitute a reference to the Family Code provisions that replaced former Civil Code Section 206.

**Welf. & Inst. Code § 14010 (technical amendment). Responsibility of parents for person under 21 years for health care**

**Comment.** Section 14010 is amended to substitute references to the Family Code provisions that replaced the former Civil Code provisions.

**Welf. & Inst. Code § 16100 (technical amendment). License**

**Comment.** Section 16100 is amended to substitute references to the Family Code provisions that replaced the former Civil Code provisions.

FAMILY CODE CONFORMING REVISIONS

**Welf. & Inst. Code § 16101 (technical amendment). Cost of administration**

**Comment.** Section 16101 is amended to substitute a reference to the Family Code provisions that replaced former Civil Code Section 222.72.

**Welf. & Inst. Code § 16106 (technical amendment). Adjustments**

**Comment.** Section 16106 is amended to substitute references to the Family Code provisions that replaced the former Civil Code provisions.

**Welf. & Inst. Code § 16120 (technical amendment). Payment of benefits**

**Comment.** Subdivision (e) of Section 16120 is amended to substitute references to the Family Code provisions that replaced the former Civil Code provisions.

**Welf. & Inst. Code § 16507.6 (technical amendment). Voluntary out-of-home placement**

**Comment.** Subdivision (a)(2) of Section 16507.6 is amended to substitute a reference to the Family Code provisions that replaced former Civil Code Section 222.10.

UNCODIFIED

**Uncodified Savings Clause for Other Enactments in 1992**

**Comment.** This section is drawn from Section 167 of Chapter 1091 of the Statutes of 1991. It provides that a provision of another act enacted in 1992 is not "chaptered out" by a provision of this act, even though this act is chaptered after the other act. The effect of this section is that the conflicting provision of the other act will become operative, and the provision of this act will not become operative. It will be necessary to make technical amendments in the 1993 legislative session to any such provisions to implement the amendment intended in this act.

COMMENTS TO AB 2641