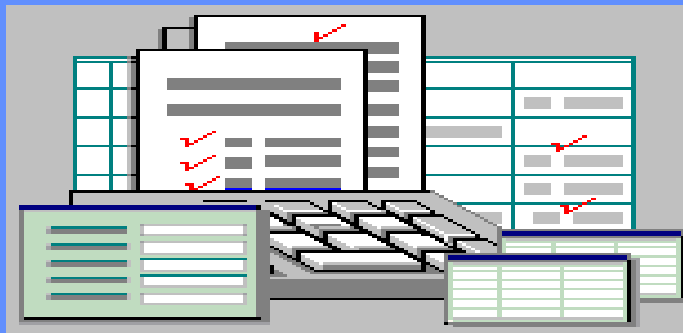
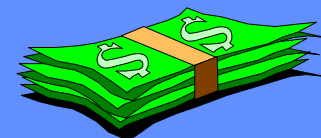


Moore/Marsden and FC §2640

“How do you calculate those things?”



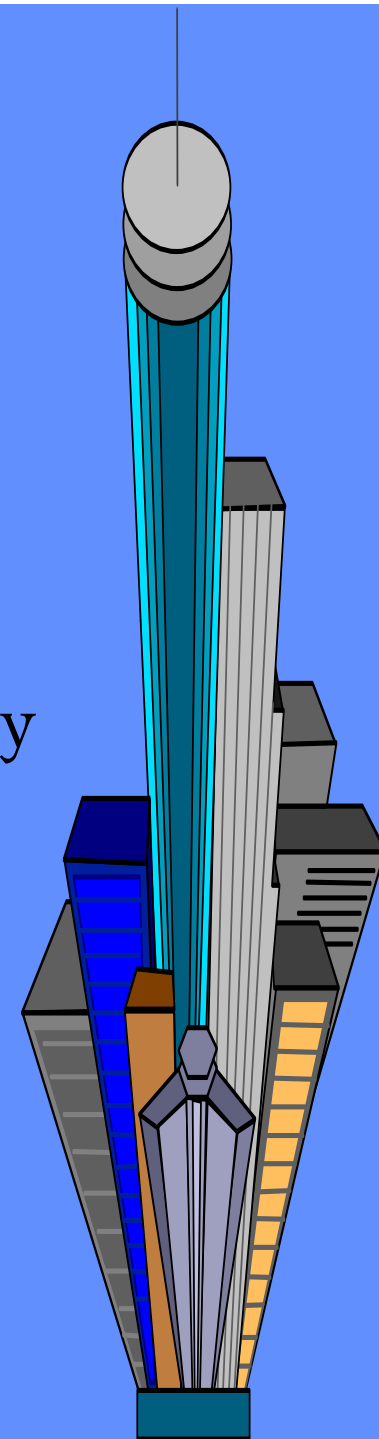
Presented by:

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Outline

- Introduction
- Moore/Marsden Formula
- Fact Pattern for Case Study
- Victoria Smith – Moore/Marsden Calculation
- Victoria Smith – Moore/Marsden Summary
- Family Code §2640
- Application of FC §2640 to Real Property post transmutation
- Victoria Smith – FC §2640 Calculation
- Victoria Smith – FC §2640 Summary
- ANY QUESTIONS?



MOORE/MARSDEN FORMULA

1. First determine the separate property and community property percentage interest in the property.
2. The separate property percentage interest is determined by crediting the separate property with the down payment and the full amount of the loan on the property less the amount by which the community property payments reduced the principal balance of the loan.
3. This sum is divided by the purchase price. The resulting figure is the separate property percentage share.
4. The community property percentage share is determined by dividing the amount in which community property payments reduced the principal by the purchase price.
5. The separate property interest in the property as valued at the end of marriage is determined by adding all the prenuptial appreciation, the amount of capital appreciation during marriage attributable to the separate funds (determined by multiplying the capital appreciation during marriage by the separate property percentage interest), and the amount of equity paid by separate funds.
6. The community property share in the value of the property is determined by adding the amount of capital appreciation during marriage attributable to community funds to the equity paid by community funds.

Fact Pattern for Case Study

- Residence Purchase Date – 12/31/80
- Original Purchase Price - \$200,000 - \$40,000 Down
- \$160,000 Loan @ 7%
- DOM – 06/30/85 – Loan Balance - \$151,704, FMV \$270,000
- DOT – 06/30/94 – Loan Balance - \$124,793, FMV \$300,000
- DOS – 12/31/01 – Loan Balance - \$85,118
- Trial – 06/30/02 – Loan Balance - \$81,660, FMV \$350,000

FAMILY CODE §2640

(a) "Contributions to the acquisition of the property," as used in this section, include down payments, payments for improvements, and payments that reduce the principal of a loan used to finance the purchase or improvement of the property but do not include payments of interest on the loan or payments made for maintenance, insurance, or taxation of the property.

(b) In the division of the community estate under this division, unless a party has made a written waiver of the right to reimbursement or has signed a writing that has the effect of a waiver, the party shall be reimbursed for the party's contributions to the acquisition of the property to the extent the party traces the contributions to a separate property source. The amount reimbursed shall be without interest or adjustment for change in monetary values and shall not exceed the net value of the property at the time of the division.

A refinance during marriage can change the equation.

Aufmuth and Moore focused on the intent of the lender to determine the character of the loan, and who received credit for it in the formula. In both cases the determination was easy.

In Moore, it was wife's premarital obligation, so she received credit for it as a contribution towards the purchase price. In Aufmuth, the loan was taken out during marriage and thus treated as a community property contribution.

In a refinance situation, the balance remaining on the original separate property loan will be paid off with the loan proceeds of the new loan, which presumably will be a community obligation, unless the spouse who owned the residence before marriage can show that the loan was made solely on his or her separate property credit. This situation is rare, absent a very wealthy spouse or a premarital agreement.

If the lender looks to the spouse's earnings during marriage as the source for repayment of the loan, then it will be held to be a community contribution, regardless of whether the underlying security was that spouse's separate property. (See *In re Marriage of Grinius* (1985) 166 Cal.App.3d 1179, 212 Cal.Rptr. 803, [lender must rely solely on spouse's separate property for loan proceeds to be considered separate property.])

At the date of transmutation, a Moore/Marsden calculation should be prepared giving the community credit for paying off the remaining loan balance. (In re Marriage of Branco (1996) 47 Cal.App.4th 1621, 55 Cal.Rptr.2d 493) The original owner's separate property will still get credit for all premarital appreciation and principal pay down. All increase in the fair market value of the property after the date of transmutation will be credited to the community. The separatizer will have a reimbursement at the time of dissolution in an amount which was "frozen" as of the date of transmutation.

Any Questions?

