<u>**Big Girls Don't Cry, But Frankie Valli Does: An Analysis of *In re the Marriage of Valli* and the Effect of the Title Presumption on Community Assets**</u>

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Pursuant to *Family Code* section 760, all property acquired by a person during marriage is *presumptively* community property, with some exceptions. For example, pursuant to *Family Code* section 770, property acquired during marriage by gift, bequest, devise or descent (i.e. through an inheritance) is separate property. There are also additional exceptions which involve the concept of "tracing," which is the process of characterizing property as either separate property or community property based on the original source of funds. However, these are the most *basic* rules in Family Law which apply to characterize property acquired during the marriage as community property or separate property.

Typically, these basic rules of Family Law are all that are needed in order to make a determination as to the characterization of property acquired during a marriage. However, in a recent case involving legendary lead singer of the Four Seasons, Frankie Valli, the characterization of a simple life insurance policy was anything but simple.

Frankie Valli and his wife, Randy Valli, married in 1984. Considering the Vallis' Hollywood lifestyle, they had an unusually long marriage which lasted approximately 20 years before they separated in 2004. Approximately a year and a half before they separated, in March of 2003, the Vallis acquired a $3.75 million life insurance policy on Frankie's life, naming Randy the owner and beneficiary of the policy. Up until the Vallis separated a year-and-a-half later, all the life insurance premiums were paid from community property funds.

At trial, the Vallis provided evidence demonstrating that the cash value of the life insurance policy was more than $365,000. Applying the basic rules of family law, the Trial Court found the life insurance policy to be a community property asset, due to the fact the life insurance policy was acquired during marriage with community property funds. The Trial Court then awarded the *entire* $365,000 asset to Frankie, ordering him to pay Randy one-half the value of the policy from some other source of funds to compensate or "equalize" her for his receipt of the entire community property asset.

Randy appealed the Trial Court's Order, arguing that the life insurance policy was her *separate property*, despite the fact that it had been both acquired during the marriage and acquired with community property funds. Randy argued that because she was named owner of the life insurance policy, the life insurance policy was *presumptively* her separate property, and that this "form of title" presumption trumped the default presumption that all property acquired during marriage is community property.

In law, the word "presumption" is a term of art which means that the Court operates with a certain belief in accordance with the presumption and the burden shifts to the opposing party to offer evidence to rebut the presumption. The form of title presumption states that all property is held according to the title of the property. There is also a community property presumption which states that all property acquired during marriage is community property (save for the separate property exceptions mentioned in the beginning of this article). Litigation often ensues, as in cases like this one, where there are two legal presumptions that conflict with one another. In this case, according to the title presumption, if the title to the insurance policy states that Randy is the sole owner, Randy is the sole owner. However, under the community property presumption, since the insurance policy was purchased during the marriage with community property funds, the insurance policy is community property and both Parties are owners. There is a split of authority among the courts as to which presumption controls.

Ultimately, the Court of Appeals *agreed* with Randy that, despite the fact that the life insurance policy was acquired during the marriage and all premiums paid during the marriage were paid with community funds, the life insurance policy was Randy's separate property. The Court based its ruling *solely* upon the evidence presented at trial that Randy was named owner of the policy. Further, the Court found, Frankie did not present evidence of an agreement or understanding with Randy that when the policy was placed solely in Randy's name as owner, that they intended the policy to be anything other than Randy's separate property. *Consequently, the Court ruled the life insurance policy was Randy's separate property.*

This case is a perfect example of how one innocent transaction by spouses can have far-reaching, dramatic results in the context of a divorce. Specifically, by merely titling an asset in one spouse's name, even without a specific intention to make such property the spouse's separate property, the other spouse may effectively make a gift of such property, even if the community pays for it.

In retrospect, Frankie could have done a number of things differently in order to avoid the end result in his case. For example, he could have taken title to the insurance policy in both their names or *his* name only, while still naming Randy the beneficiary of the policy. In this manner, Randy still would have been afforded the security which the Parties had intended for her in the event that Frankie passed away, without making the policy Randy's separate property in the event of a divorce. Similarly, if the Parties had a Revocable Trust (or Living Trust) in place, they could have titled the policy in the name of their Trustee(s), naming Randy as beneficiary. In this situation, the life insurance policy would still be community property. In the alternative, the Parties could have named Randy both the owner and beneficiary of the life insurance policy, but entered into a written agreement, perhaps a Post-Nuptial agreement, reflecting their intent that the life insurance policy be <u>community property</u>, despite titling the policy in Randy's name alone.

As in this case, attorneys often see legal problems arise when those who have assets refuse to spend money on legal advice for the protection of such assets. In the hopes of protecting yourself from such a mistake, when considering how to take title to significant assets acquired during marriage, be sure to consult an experienced attorney to help you navigate the multitude of laws governing the subject. Doing so will assist in ensuring your and your partner's intentions in the event of dissolution or death of a partner. The attorneys at Cooper-Gordon have considerable experience in asset characterization for the purposes of dissolution or death of a partner and offer initial consultations at reduced rates.