

HOLD IT! I DID NOT MEAN THAT!

*Marriage of Holtemann* (2008) 162 Cal. App. 4th 1175, 76 Cal. Rptr. 3d 615.

Estate tax planning is a device intended to help with the eventual outcome of life, that is, death and taxes. The planning process is typically geared to thinking of all the possibilities that can occur upon death in order to properly plan and effectively deal with its outcome.

Mr. Holtemann, while taking the steps to properly manage his estate for estate tax planning purposes, created a transfer document that was intended to transfer his separate property into community property; the purpose being to minimize taxes and avoid probate if either he or his wife, Barbara, died. What Mr. Holtemann did not realize is that sometimes "til death do us part" is pre-empted by "I will have my lawyer call yours!"

The parties were married in 2003, with Frank Holtemann coming into the marriage with considerably more assets than Barbara. The parties jointly retained an estate planning attorney to help them with the estate planning process. In March of 2005, the parties executed a "Spousal Property Transmutation Agreement" wherein Frank's separate property was clearly designated as subject to the transmutation provisions of the agreement that changed the character of the assets from separate to community.

The parties separated on June 2, 2006 and Barbara filed for divorce on August 1, 2006.

Litigation in this case dealt with the obvious question as to whether Mr. Holtemann really "meant" what he was representing to his wife and the world, when he signed documents which as the Second District Court of Appeal wrote were "replete with language that clearly stated that Frank intended to transmute his separate property to community property and that he intended to change the *characterization* of the property from separate to community". The Court felt that Mr. Holtemann's representations clearly qualified under Family Code Section 852(a) wherein it states that "A transmutation of real or personal property is not valid unless made in writing by an express declaration that is made, joined in, consented to, or accepted by the spouse whose interest in the property is adversely affected."

Mr. Holtemann of course argued that the transmutation was intended for estate planning purposes and not dissolution purposes. The Court, however, could not find any authority which would allow a transmutation to be conditional or temporary, and as such, Frank's motive in creating the transfer had no impact on its effect.

We should not feel too sorry for Mr. Holtemann however, as some of the sting of the situation was taken out via his entitlement under the provisions of Family Code Section 2640. Family Code Section 2640 provides that there is a right of reimbursement for traceable separate property contributions to the acquisition of community property, the measure of reimbursement being the value of the property at the time the right arises, not to exceed the property's net value at division.