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# Spousal reimbursement rights: Marriage of Cochran, 2001

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**On divorce, spouse is entitled to reimbursement for payment of (1) fee required for family home building permit and (2) construction loan consideration, both paid from separate property.**
*Marriage of Cochran* (2001) 87 CA4th 1050, 104 CR2d 920

During marriage, a husband opened a bank account with the proceeds of his profit-sharing plan (approximately $77,400). He wrote three checks on the account: (1) $34,192 was used to pay off the balance on a community asset; (2) $32,950 was paid as earnest money for a construction loan for the couple's home; and (3) $9258 was used to pay for school fees required to obtain a building permit for the home. Later, in divorce proceedings, the husband and wife stipulated that approximately $43,000 of the account was the husband's separate property and the $34,400 balance was community property. The husband sought reimbursement of the $32,950 earnest money and the $9258 school fees, claiming they were contributions to the family home paid from his separate portion of the account. The trial court denied the claim, finding insufficient evidence that the $32,950 earnest money payment was made entirely from separate property funds, and holding that the school fees were not reimbursable "payments for improvements" within the meaning of Fam C §2640(a).

The court of appeal reversed in part and affirmed in part. Under Fam C §2640(b), absent a written waiver, a divorcing spouse has a right to reimbursement for any separate property payments for improvements to community property. Here, the husband provided sufficient evidence tracing his separate property in the account to the latter two payments in question. The first check essentially exhausted the community funds in the account; the second and third checks were presumed to be drawn on the remaining funds, namely, the husband's separate property. Under the construction loan agreement, $10,000 of the $32,950 earnest money was allocated as an interest reserve, and the remaining $22,950 was allocated for improvements. The husband was not entitled to reimbursement of the $10,000 interest reserve because interest payments are not reimbursable under §2640 and the husband failed to show that the $10,000 was not used for interest. The remaining $22,950 was reimbursable, however, because that entire sum was used for home construction.

The appellate court held that the school fees were reimbursable because they were required to obtain the building permit and were not a property tax. Under §2640(a), the only nonreimbursable items are payments for interest, maintenance, insurance, and taxes. The court reasoned (87 CA4th at 1062):

Since the Legislature's intent was to allow separate property reimbursement for home improvements, and payment of the school fee, which is not a tax, was mandatory in order to obtain a building permit, we conclude that the fee was reimbursable as a home improvement expense. It was paid in furtherance of building husband and wife's home and it would be inequitable and contrary to the purpose of section 2640 to deprive husband of the right to its reimbursement.

▶***THE EDITOR'S TAKE:*** Viewed from the perspective of attorneys representing a spouse whose marriage has already collapsed, this case does not have much to say: Some assets will go to her and some to him, according to how the accountants testify, and the lawyers are stuck with the historical facts of what the parties did before they stopped loving each other.

On the other hand, viewed from the perspective of attorneys dealing with the beginning rather than the end of the relationship, this decision generates much to say, notwithstanding the slightly unsavory aroma of advising people in love how they might want to act to better protect themselves when they later fall out of love. Three of the assets involved in this marriage suggest useful advice:

1. *The Bank Account.* The parties deposited into this account $77,000 in proceeds from a profit-sharing plan that consisted of both separate and community funds. They made three payments from this account before depositing additional funds. Because the first payment was for a community debt, it was treated as exhausting the community funds in the account, leaving the rest of the money as the husband's separate property. That made the other two payments traceable. The appellate court forgave the husband's lack of detailed records because the money had all gone through one account and not gotten hopelessly commingled with other funds. *Lesson:* Use lots of different bank accounts for your transactions—they may make up for your lack of proper bookkeeping later on.

*2. The Interest Reserve.* The husband lost out on his claim for reimbursement of $10,000 he spent toward construction of the community house because he could not show that it did not represent interest on the loan. Under Fam C §2640, only some separate property contributions to a community asset are reimbursable (*e.g.,* principal payments are reimbursable; interest is not). The distinction between what is and what is not reimbursable is more political than logical, and thus is not likely to be intuitively apparent to the spouses. If the wife makes next month's $1000 mortgage payment on *their* house out of *her* trust fund, I doubt she really appreciates that she will be reimbursed only $100 of that, because the rest of the payment went to interest (if this was the first year of the loan), or will perhaps be reimbursed $900 of it instead (if this was the last year of the loan). *Lesson:* Because there is no reimbursement for interest, maintenance, insurance, or property tax payments made for the community property, even if you want to spend your own money on the house, don't do it this way; spend it as advised in the next paragraph.

3. *The School Fees.* The court held that, under these circumstances, the school fees paid were a home improvement expense rather than a tax, and thus were reimbursable. Although that decision seems sensible, it was a lucky break for the husband (the trial court went the other way on it). *Lesson:* Limit your separate property contributions to what will be indisputably regarded as downpayments, principal reductions, or payments for improvements, and don't spend it on hokey items that a court can characterize as it pleases.

Let me add that, even when an item is reimbursable, the reimbursement is not very good. It is "without interest or adjustment for change in monetary values and shall not exceed the net value of the property" (Fam C §2640(b)), and thus is neither a wise investment nor a good loan. If you want better treatment for your one-sided expenditures, joint tenancy or tenancy in common would be better than community property as the vehicle for holding title. —*Roger Bernhardt*