

Membership Organizations

Many businesses sell goods or provide services only to members. Some businesses limit membership in some manner, such as to persons living in a particular geographical area or persons employed in particular trades or professions. Credit unions, for example, would fall into this category of membership organization. Other businesses, however, offer membership to anyone willing to pay the required fee. Most gyms and health clubs fit into this classification.

Many membership organizations discriminate on the basis of marital status. The discrimination usually manifests itself in the form of higher dues or fees for an unmarried couple than for a married couple.

The largest membership association in the nation is one example of an organization with discriminatory membership fees. Persons who are over 50 years-old may join the American Association of Retired Persons and gain many benefits through membership. AARP has a basic yearly membership fee of five dollars per individual member. The spouse of a married member may join without cost. Two unmarried adults who live together, however, must each pay for an individual membership. Thus, a married couple pays half the annual fee of an unmarried couple. This pricing disparity constitutes discrimination on the basis of marital status.

AARP declined two invitations to attend public hearings conducted by the Consumer Task Force. In a letter to the Task Force, AARP attempted to justify its disparate treatment of married and unmarried couples by claiming that it will give "domestic partners" a marriage discount in any state that recognizes domestic partners as a married couple.⁷⁷ This response begs the question. If domestic partners are considered to be married under the law of any jurisdiction, the couple ceases to be a domestic partnership. Unmarried adults who live together should pay the same fee for joint membership as do married couples.

AARP has long been in the vanguard of protecting the rights of older adults. In keeping with this excellent tradition of vigorous advocacy, AARP

77. "Supplement," p. 24.

"There are legal and economic barriers that prevent many older adults from marrying. . . . AARP should be sensitive to these problems and take them into account in developing membership fees."

should exercise leadership by removing even a hint of discrimination from its membership fees. There are legal and economic barriers that prevent many older adults from marrying. For example, many older same-sex couples are legally prevented from marrying. As they join AARP, they must annually pay double that of their married heterosexual counterparts. Also, there are "marriage penalties" or economic disincentives that discourage many older opposite-sex couples from marrying, such as pension plan regulations that terminate survivor benefits from a previous marriage when a widow or widower remarries. AARP should be sensitive to these problems and take them into account in developing membership fees.

IT IS RECOMMENDED that the American Association of Retired Persons revise its membership fees so that two adults residing in the same household can have a joint membership in the organization, without a price disparity on the basis of their marital status.

Health Clubs. Two years ago, the Family Diversity Report found that one of the largest health clubs, Holiday Health Club, discriminated against unmarried individuals and couples.⁷⁸ Holiday offered a substantial spousal discount on first year membership fees. The discount was not available to two unmarried people who wanted to join together, such as a brother and sister, parent and adult child, or a same-sex couple. Last year, Holiday Health Club discontinued its spousal discount. Discounts are now offered periodically to any two persons who join at the same time.⁷⁹ However, other clubs, such as Sports Club Los Angeles and Mid Valley Athletic Club, continue to discriminate on the basis of marital status.⁸⁰ In the case of Mid Valley, it appears that the discriminatory policy is selectively imposed on some consumers and not others.⁸¹

IT IS RECOMMENDED that these actions be taken in connection with health clubs that discriminate against unmarried couples:

78. Final Report, Los Angeles City Task Force on Family Diversity (1988), p. 83.

79. Report of Michael Cautillo, "Supplement," p. 152.

80. Ibid.; Testimony of Nancy Matthews, "Supplement," p. 245.

81. Ibid.

**"The Greater Los Angeles Zoo Association
is one of the largest membership organizations
in Southern California . . . and regular
membership provides for the admission of any
two adults regardless of their marital status."**

*** The Los Angeles City Attorney should contact such clubs and instruct them to cease and desist from engaging in such activities. If voluntary compliance is not forthcoming, the City Attorney should seek injunctive relief in court.**

*** Victims of marital status discrimination by health clubs should file a complaint with the state Department of Fair Employment and Housing. That department has jurisdiction to enforce the Unruh Civil Rights Act which prohibits arbitrary discrimination by any business establishment of any kind whatsoever.**

Museums and Zoos. The Greater Los Angeles Zoo Association (GLAZA) is one of the largest membership organizations in Southern California, boasting 133,000 members (51,000 households).⁸² Regular membership in GLAZA was introduced in 1980. Originally, "active" membership was issued to a member and "spouse." More recently, that restriction was lifted and regular membership provides for the admission of any two adults regardless of their marital status.⁸³ The San Diego Zoo has a similar policy allowing any two adults to buy a "dual membership."⁸⁴ The Los Angeles Natural History Museum also does not discriminate on the basis of marital status. It has a "family" membership which is available to all members of the same household, regardless of relationship.⁸⁵ Although the County Art Museum does not actually discriminate against unmarried couples in its membership fees, literature it provides to consumers gives the appearance of discrimination. For example, brochures define "family" membership as husband, wife, and minor children.⁸⁶ The Museum is in the

82. Testimony of Rick Nordin, "Supplement," p. 211.

83. "What's in a Family?", GLAZA News, "Supplement," p. 137.

84. Ibid.

85. Ibid.

86. When the membership department was contacted by telephone, one staff member explained that "family" membership was available to spouses and their children. Upon further inquiry, a supervisor agreed that the language was misleading and promised that the Museum's management would find a way to appropriately expand the definition of family to remove any appearance of discrimination.

"In 1987, a proposal was presented at [AAA's] annual membership meeting to drop the 'spouse' associate concept in favor of a more generic 'household' associate membership."

process of revising its literature to be consistent with the Art Museum's intended policy not to discriminate against unmarried couples in connection with membership fees.

Automobile and Travel Clubs. For several years, the Automobile Club of Southern California has been challenged to remove marital status discrimination from the structure of its membership dues. A master membership in the club is \$34, and a "spouse" can join as an associate member for \$12. Under the club's by-laws, however, two unmarried adults must pay for two master memberships, even if they live in the same residence and jointly own one car.

In 1987, a proposal was presented at the club's annual membership meeting to drop the "spouse" associate concept in favor of a more generic "household" associate membership.⁸⁷ That proposal prompted the Auto Club to convene an internal management task force to review membership practices and pricing.⁸⁸

An Auto Club representative informed the Consumer Task Force that, after completing a computer analysis checking membership fees and usage of services, management decided not to revise the "spousal" discount.⁸⁹ Although the Consumer Task Force has questioned the methodology of the study and has asked to see the raw data, the Auto Club has not supplied this information.

Without being able to analyze the methodology of AAA's study and discuss alternate pricing practices that would achieve a similar cost-benefit result, the Consumer Task Force is unable to accept the assertion of the Auto Club that its spousal discount is justified.

The Automobile Club of Southern California might learn from the experience of two of its affiliates. The Auto Club of Eastern Massachusetts is able to thrive without engaging in marital status discrimination. It provides associate membership status, with a corresponding discount, to household members of a master member. The Auto Club of Washington State

87. "Discrimination Wars," Los Angeles Weekly, "Supplement," p. 134.

88. Final Report, Los Angeles City Task Force on Family Diversity (1988), p. 83.

89. Testimony of Robert Wright, "Supplement," p. 214.

"The practice of automobile and travel clubs in granting associate membership discounts to married couples but not to unmarried couples who live together and jointly own their vehicles does not appear to be justified."

has been cited by the Seattle Human Rights Department for marital status discrimination based on its policy of limiting associate memberships to spouses.

Chevron Travel Club is another membership organization that discriminates against unmarried couples. Chevron charges members \$36 per year. A spouse may be added for an additional \$3 per year. This add-a-member discount is not available to unmarried couples.⁹⁰ In addition to providing accidental loss-of-life insurance, spouses also receive other benefits, such as towing and road service and \$300 emergency trip interruption coverage.⁹¹

Chevron declined an invitation to send a representative to testify at hearings conducted by the Consumer Task Force. However, in a letter sent to the Task Force, a Chevron official acknowledged the existence of the discount to "spouses" and implied that Chevron has no intention of changing its membership rules.⁹²

The practice of automobile and travel clubs in granting associate membership discounts to married couples but not to unmarried couples who live together and jointly own their vehicles does not appear to be justified.

IT IS RECOMMENDED that the Los Angeles City Attorney take the following actions to protect local consumers from marital status discrimination by automobile and travel clubs:

*** Send a letter to clubs such as Chevron and AAA instructing them to cease and desist from their practice of granting discounted memberships to married couples but not to unmarried couples.**

*** If offending companies do not agree to voluntarily comply within a reasonable period of time, the City Attorney should file a complaint with the state Department of Fair Employment and Housing against them, on the ground that granting membership discounts to married couples but not to unmarried couples violates the Unruh Civil Rights Act.**

90. Report of Michael Cautillo, "Supplement," p. 152.

91. Chevron Brochure, "Supplement," p. 27.

92. Letter from Chevron U.S.A. Inc., "Supplement," p. 26.

"Membership fees should be changed since they unfairly favor the nuclear family of husband, wife, and child. Unmarried individuals and couples currently must subsidize those in the favored class."

Country Clubs. Some private country clubs discriminate against unmarried individuals and couples. The Porter Valley Country Club is a case in point. Porter Valley charges the same membership fee to a single individual as it does to an entire family.⁹³ Not only do Porter Valley's by-laws contain marital status bias, they are also sexist. The by-laws provide that "membership includes all privileges and facilities . . . for the member applying, his wife and minor children, under 18, unmarried and living in his home."⁹⁴

Although Porter Valley's management has acknowledged that its fee structure has created a debate among members, it has not remedied the problem. Membership fees should be changed since they unfairly favor the nuclear family of husband, wife, and children. Unmarried individuals and couples currently must subsidize those in the favored class. The situation at Porter Valley is probably representative of many other private clubs in Los Angeles.

Recently, at the suggestion of City Councilwoman Joy Picus and City Controller Rick Tuttle, the City of Los Angeles prohibited discrimination by private clubs. Although the scope of the ordinance includes race, religion, national origin, sex, and sexual orientation, the term "marital status" is absent. A similar deficiency exists in a new state law prohibiting business deductions at offending clubs.⁹⁵

IT IS RECOMMENDED that the following actions be taken to strengthen laws prohibiting discrimination by private clubs:

*** The Los Angeles City Attorney should request the Mayor and City Council to add "marital status" to the city's ordinance prohibiting private club discrimination.**

*** The state Legislature should add "marital status" to Business and Professions Code Section 22438 which disallows business deductions for expenditures at clubs that engage in illegal discrimination.**

93. Complaint of Pat Kelly, "Supplement, pp. 65-74.

94. "Supplement," p. 72.

95. Business and Professions Code Section 23438.

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Hospitals and Nursing Homes

At some point during their lifespan, many adults need the care of trained health professionals in hospitals or nursing homes. In the case of hospitals, the stay often does not exceed a few days, weeks, or months. Nursing home care, on the other hand, is usually provided on a long-term basis. In either event, patients want and need ongoing communication with, and support from, their loved ones.

In many ways, laws pertaining to health care are premised on an assumption that a patient's family consists only of a spouse, children, and other blood relatives. One example involves medical decisionmaking. In a nonemergency situation where the patient is unable to give informed consent for medical procedures, hospital staff must seek permission from the patient's "closest available relative" in the absence of a legal guardian or other written directives from the patient.⁹⁶ The term "relative" appears to be limited to a patient's spouse and blood relatives.⁹⁷

Many doctors and hospitals may be unwilling to perform nonemergency surgery on an unconscious or incompetent patient without permission from a court appointed conservator or guardian.⁹⁸ Again, when it comes to appointment of a conservator, the law gives priority to relatives in the absence of a prior written directive from the patient.⁹⁹

Once a conservator is appointed for a patient, the conservator generally has the authority to control most important aspects of the patient's life. For example, the conservator can decide whether the patient will live at home or in a skilled nursing facility. Even though their authority in this regard is dubious, at best, many conservators often decide which persons may visit the patient and which may not.

Issues such as visitation and medical decisionmaking should be of

96. Cobbs v. Grant (1972) 8 Cal.3d 229, 243.

97. Hartford v. Goossen (1978) 84 Cal.App.3d 649, 654.

98. Testimony of James Ludlam, Esq., "Supplement," p. 195.

99. Probate Code Section 1812.

"The nursing home refused to allow visitation because the conservator had forbidden it. Weeks later, and before the partner could obtain a court order granting visitation, the patient died. The patient's body was flown to another state for burial and the patient's partner was denied the opportunity to pay last respects."

critical concern to unmarried individuals and couples. Adults who have not taken the proper legal precautions may find themselves physically and emotionally separated from a loved one when a medical emergency arises. Some hospitals may limit the visitation privileges of intensive care patients to spouses or blood relatives. Some blood relatives may usurp decisionmaking and deny visitation to the patient's unmarried partner.

Two recent cases illustrate how the legal and medical systems can ignore or unduly restrict the rights of unmarried adults. A local case involved two men who were unmarried partners.¹⁰⁰ They lived together for eight years and functioned as a family, sharing holidays, vacations, and daily activities. Last year, one partner had an accident and became brain damaged. While he was hospitalized for several months, his partner visited him every day, providing love, support, and encouragement. Then, the patient's only relative (a brother) flew into town and without notice to the patient's partner, obtained a court order appointing him conservator. The brother moved the patient to a nursing home and would not disclose the location to the patient's partner. When the partner inadvertently discovered the location of the nursing home, he tried to visit his mate. The nursing home refused to allow visitation because the conservator had forbidden it. Weeks later, and before the partner could obtain a court order granting visitation, the patient died. The patient's body was flown to another state for burial and the patient's partner was denied the opportunity to pay last respects.

Another case had a happy ending, but only after years of legal battles involving emotional and economic struggles.¹⁰¹ Karen Thompson and Sharon Kowalski lived together for several years as lovers. In 1983, Sharon suffered brain damage from an automobile accident. As soon as Sharon's parents became her court-appointed guardians, they cut off Karen's visitation rights. After five years of legal battles, leaving emotional scars and nearly \$200,000 in legal debts, Karen not only won the right to visitation but was able to take her lover home.

100. Testimony of Juan Navarrette, "Supplement," pp. 195, 254-255.

101. "Whose Life Is It?," Los Angeles Times, Aug. 5, 1988, "Supplement," p. 142.

"Service providers and government regulatory agencies need to develop specific rules and regulations to protect the rights of patients to maintain ongoing contact, including the right to privacy and intimacy, with their unmarried partners or friends."

These cases suggest that there must be a better way for the legal system to handle conflicts between blood relatives and unmarried partners when a loved one becomes ill or incapacitated. Several actions can be taken by individuals and by society to improve matters.

First, unmarried individuals and couples should take precautionary measures in advance of a medical emergency.¹⁰² Four documents will protect the rights of unmarried adults: a durable power of attorney for health care (giving the partner priority in medical decisionmaking and visitation); durable power of attorney for asset management; nomination of a conservator (less than one page in length); and a will. Although it is best to have an attorney draw up these documents so that they are tailor made to the needs of the client, other options are available. For example, the durable power of attorney for health care is available from hospitals, doctors, or the California Medical Association (CMA). The CMA form includes a nomination of conservator.¹⁰³ A form for a simple statutory will is available from most stationery stores. A handwritten will may suffice in a pinch, but it must be totally handwritten, can't contain any type anywhere on the page, and must not be signed by witnesses.

Second, community organizations should encourage individuals to execute their own durable power of attorney. The activities of California Health Decisions are commendable. That group publishes a newsletter, distributes brochures, and conducts workshops on the durable power of attorney.¹⁰⁴ Services of California Health Decisions are available to employers, clubs, and church groups.

Third, service providers and government regulatory agencies need to develop specific rules and regulations that protect the rights of patients to maintain ongoing contact, including the right to privacy and intimacy, with their unmarried partners or friends. In some respects, current laws and regulations are unnecessarily vague and fuzzy. Clarification of rules and education of staff would help. In this regard, the Los Angeles County Bar

102. Testimony of Jan Stone, Esq., "Supplement," pp. 258-262.

103. CMA form, "Supplement," p. 112-119.

104. "Supplement," pp. 106-111.

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Association should be commended for its efforts to develop "Guidelines for Forgoing Life-Sustaining Treatment for Adult Patients." Those guidelines would recognize that an adult who is not related to the patient by blood or marriage could satisfy specific legal criteria to act as a surrogate decisionmaker for a patient who is incompetent and terminally ill.

Fourth, revisions of statutes and court rules are in order. The laws should promote fairness and common decency, as well as the rights of patients to maintain important relationships.

IT IS RECOMMENDED that the following actions be taken to protect the rights of unmarried individuals and couples who are hospitalized or placed in nursing homes or under the control of a conservatorship:

* **The Hospital Association of Southern California should survey the visitation rules of its members and should encourage them to eliminate any marital status discrimination that might exist in their policies.**

* **Legislation should be introduced to: (1) require those who petition a court for a conservatorship to give notice to any adult who has lived with the patient within one year preceding the petition; and (2) prevent a conservator from restricting the visitation rights of a patient without prior court approval.**

* **Court rules and policy memoranda should be revised to: (1) require a petitioner for a conservatorship to advise the court if the patient has been living with another adult on a long-term basis (more than one year, for example); (2) give notice of the petition to such roommates or unmarried partners of the patient; (3) require probate investigators to ascertain the existence of, and to interview, such roommates or unmarried partners; and (4) require probate investigators to investigate and notify the court of reported restrictions on a patient's visitation privileges.**

* **The Los Angeles City Attorney should convene a meeting of agencies with jurisdiction over patient's rights in hospitals and nursing homes (such as the state Department of Health Services, state Department of Social Services, Ombudsperson's Office of the state Department of Aging, County Adult Protective Services, County Public Guardian's Office, County Probate Investigator's Office, and the Presiding Judge of the Superior Court Conservatorship Department). The meeting should focus on this report and its recommendations and should be a**

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catalyst for strengthening protections for the rights of unmarried individuals and couples who become hospitalized or incapacitated.

Another area of concern to the Consumer Task Force involves adults with developmental disabilities who reside in state-funded developmental centers on a long-term basis. It is heartening to know that after years of prodding from disability rights activists, the state Department of Developmental Services has adopted a formal policy on the right of disabled adults to "social-sexual development."¹⁰⁵ The policy acknowledges that the rights of disabled adults to social-sexual development should be respected, as well as their right to be protected from exploitation, abuse and sexually transmitted disease. This policy is premised on the legal rights of developmentally disabled persons to freedom of intimate association, as guaranteed by the constitutional rights of privacy and equal protection.¹⁰⁶ Some developmental centers have adopted specific guidelines and staff training programs dealing with individual social-sexual behavior.¹⁰⁷ These policies and guidelines do not discriminate on the basis of marital status or sexual orientation.

However, the legal rights of physically or mentally disabled adults residing in nursing homes, community care homes, or other long-term care facilities are less clearly defined. These facilities are regulated by the state Department of Health Services or the state Department of Social Services. Although these departments have promulgated regulations prohibiting discrimination by licensed facilities and staff, the regulations are silent on the subject of marital status and sexual orientation discrimination.¹⁰⁸ Eight years ago, the state Commission on Personal Privacy recommended that discrimination on the basis of marital status and sexual orientation be specifically prohibited by departmental regulations.

105. Policy Statement, "Supplement," p. 128a.

106. Legal Memorandum, "Supplement," p. 128m.

107. Sonoma Developmental Center, "Supplement," pp. 128b-128l.

108. Final Report, Los Angeles City Task Force on Family Diversity (1988) p. 83.

"One provision in existing patient's rights regulations creates the impression that marital status discrimination is acceptable in licensed facilities."

That recommendation was reaffirmed two years ago by the Family Diversity Task Force.¹⁰⁹ The Consumer Task Force supports this proposal.

One provision in existing patient's rights regulations creates the impression that marital status discrimination is acceptable in licensed facilities.¹¹⁰ It provides that, if married, a patient has the right to be assured privacy for visits by the patient's spouse and if both are patients in the facility, the couple must be permitted to share a room, unless medically contraindicated.

IT IS RECOMMENDED that the state Department of Health Services and the state Department of Social Services promulgate regulations amending Title 22 of the California Administrative Code to prohibit discrimination on the basis of marital status and sexual orientation. Furthermore, Section 72527(15) should be amended to delete the language limiting the right of room-sharing or conjugal visitation to spouses. That regulation should protect the rights of married and unmarried couples.

Unmarried adults experience other problems as recipients of government support and medical services. One area involves the disparate treatment of married couples and unmarried couples in connection with Medi-Cal eligibility.¹¹¹ The use of vague language in the Medi-Cal application blurs the distinction between eligibility of married and unmarried adults. Regulations permit an applicant living with a spouse to retain more assets and still be eligible than could an applicant living with an unmarried partner.

IT IS RECOMMENDED that the Medi-Cal Long Term Care Division take two actions to rectify these problems. First, ambiguous and confusing language regarding the terms "couple" and "spouse" should be eliminated from the information packet given to Medi-Cal applicants. More importantly, eligibility restrictions on the assets of an applicant should be the same for married and

109. Ibid.

110. Cal. Admin. Code., Title 22, Sec. 72527(15).

111. Testimony of G. Jay Westbrook, "Supplement," pp. 273-274.

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unmarried couples. This would bring regulations into conformity with statutory law prohibiting discrimination on the basis of marital status in government-aid programs.¹¹²

Another area of concern to the Consumer Task Force involves "marriage penalties" that are built into state and federal programs that provide economic and other assistance to severely disabled adults.¹¹³ Not only do programs such as In-Home Support Services (IHSS) and Supplemental Security Income discourage severely disabled adults from marrying, they promote program administrators to invade the privacy of recipients to determine if they are cohabiting with an unmarried opposite-sex partner.

IT IS RECOMMENDED that the Health and Human Services Committee of the California Assembly conduct hearings to determine how the state and federal governments can eliminate "marriage penalties" from government assistance programs for severely disabled adults.

112. Welfare and Institutions Code Section 10000.

113. Testimony of Barbara Waxman, "Supplement," p. 242.

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Rights of Survivors

The death of a loved one is a painful and difficult experience for most people, even when social institutions provide a survivor with empathy, respect, and support. Imagine the impact on a survivor when support services are unavailable or, worse yet, when the survivor is treated with contempt or ridicule. Unfortunately, unmarried surviving partners all too often fall victim to discrimination when their lifemates die.

Sometimes, an unmarried survivor is pushed out of the picture by blood relatives of the deceased lifemate. Financial considerations often trigger this response by parents or siblings. In the case of same-sex couples, relatives may be motivated by homophobia or sometimes by AIDS hysteria.¹¹⁴ Fights such as these take a high toll, both emotionally and financially.

In addition to dealing with their own grief, survivors must conduct business with the hospital, mortuary, church, cemetery, florist, and newspaper. Sometimes, in the midst of all this, a landlord or blood relative of the deceased may try to evict the survivor from his or her home or apartment of many years. Eviction often proceeds if the survivor did not have his or her name on the apartment lease or title to the home.¹¹⁵ In some cases, relatives even try to evict a lifemate before his or her partner dies.¹¹⁶

Cemeteries and Mortuaries. When an unmarried adult dies in a hospital or other medical facility, the staff must determine to whom the body should be released. Generally, the body will be transferred to a mortuary, but which one? The mortuary selected by blood relatives, or the one selected by the lifemate of the deceased? Once this is determined, other critical decisions follow. In the event of a disagreement between blood relatives and a surviving lifemate, whose directions shall a mortuary

114. "Legal Challenge to AIDS Patient's Wills Seen on the Rise," Daily Journal, Aug. 16, 1988, "Supplement," p. 139.

115. Testimony of William Bartlett, "Supplement," p. 257.

116. Testimony of Juan Navarrette, "Supplement," p. 255.

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follow? What type of casket and funeral service? Cremation or burial? What cemetery?

California law is clear on the subject of disposition of remains.¹¹⁷ In the absence of directions by the deceased, a surviving spouse or blood relatives have exclusive authority to make the decisions.¹¹⁸ What can be done to insure that an unmarried surviving partner has rights and that those rights are respected? Legal experts, hospital officials, and mortuary representatives all agree that the only way to insure protection is by having a will or a durable power of attorney for health care.¹¹⁹

A will should contain a specific provision that delegates authority as to the disposition of the decedent's remains. The standard form for a durable power of attorney for health care contains a clause that gives the designated agent such authority.¹²⁰

Mortuaries, such as Forest Lawn, also provide pre-need services to consumers.¹²¹ Without cost, a pre-need counselor will help an individual or couples make funeral and burial decisions. Forms are available, such as a "Family Record Organizer" (on which a person indicates preferences on all aspects of the funeral and burial). When completed, the forms are kept in a records vault at Forest Lawn. Storage of the forms is provided without cost, even if cemetery property has not been purchased. A wallet-size I.D. card is available which indicates the desired choice of mortuary.

Some of the forms used by mortuaries such as Forest Lawn could be improved. For example, the wallet I.D. card should provide a place for the consumer to list the name of the person to whom authority has been delegated regarding the disposition of remains. The "Family Record Organizer" provides one column for information regarding a "husband" and

117. Testimony of Frank Haswell, "Supplement," pp. 281-283.

118. Health and Safety Code Section 7100.

119. Testimony of Frank Haswell, "Supplement," p. 282; Testimony of Jan Stone, "Supplement," p. 258; Testimony of James Ludlam, "Supplement," p. 195.

120. Testimony of Frank Haswell, "Supplement," p. 282; Durable Power of Attorney, "Supplement," p. 115.

121. Id., at p. 283.

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another column for information about a "wife." This language could be modified to reflect the diversity in consumer demographics. For example, each column could be designated for use by "spouse or partner."

Unfortunately, there is no guarantee that the rights of unmarried survivors will be respected even when both partners execute wills and durable powers of attorney. Bias and prejudice by family members as well as some professionals in the funeral industry can make things difficult for unmarried survivors. On this score, prevention is the key. Couples should develop good relations with their parents and families. Educational seminars for funeral industry professionals would also help.

IT IS RECOMMENDED that the following actions be taken to protect the rights of unmarried survivors:

* The Los Angeles City Attorney should transmit copies of this report to the state Department of Consumer Affairs for distribution to its staff members and to the appointed members and staff of the State Cemetery Board and the State Board of Funeral Directors.

* The State Cemetery Board and the State Board of Funeral Directors should sponsor educational seminars for licensed professionals regarding the concerns of unmarried individuals and couples. Consumer education brochures published by these boards should contain a paragraph directed to unmarried individuals and couples that encourages them to prepare wills and durable powers of attorney for health care.

Newspaper Obituaries. Not only do death notices and newspaper obituaries serve to inform the public of a decedent's impending funeral, they have a tremendous symbolic and emotional value to survivors. Just as society is informed of the passing of one of its members, so too is it reminded that significant others who have been left behind could use sympathy and support. The obituary also serves an unstated purpose of acknowledging the value of their relationship with the deceased.

Discrimination against unmarried couples once was rather commonplace among many obituary classified editors. For example, as recently as three years ago, the Washington Post and San Francisco Chronicle refused to list an unmarried partner as a survivor in

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obituaries.¹²² Under a barrage of protest from gay and lesbian organizations, these newspapers finally eliminated marital status discrimination and will now list unmarried surviving partners as a "longtime companion" or use some other appropriate terminology.

For many years, the Los Angeles Times has listed an unmarried surviving partner in a manner suitable to the partner and the decedent's family members.¹²³ A surviving partner might be listed as "longtime companion," "lifemate," or "life partner." In the event of a dispute between the unmarried survivor and the family, the obituary editor would attempt to reconcile differences and forge an agreement on terminology.

Newspapers usually receive the content of a death notice or obituary from the mortuary. The Los Angeles Times, for example, has about 60% of its obituary notices placed by mortuaries. The rest are received from surviving family members who take charge. In the event that a dispute as to content could not be resolved, the Times will run two ads -- one from the person who has legal authority over the disposition of remains (either the unmarried partner or the decedent's blood relatives) and another to satisfy the needs of a partner or family member.¹²⁴

One unmarried survivor, whose partner was prominent in the entertainment industry, testified regarding the discriminatory obituary policy of an industry newspaper.¹²⁵ When his lover of 11 years died of AIDS in 1988, both the Daily Variety and the Hollywood Reporter were provided with an obituary notice, briefly listing the decedent's credits and the fact that he was survived by his unmarried partner. The Reporter ran the notice in full, the Daily Variety did not. The Daily Variety refused to acknowledge the existence of the unmarried partner as a survivor. According to one news story, the associate publisher of the Daily Variety told a reporter for the Los Angeles Times that the policy of not listing

122. "Supplement," p. 133.

123. Testimony of Gordon Lowe, "Supplement," p. 195.

124. Ibid.

125. Testimony of Christopher Sands, "Supplement," p. 275-280.

"According to one news story, the associate publisher of [a newspaper] told a reporter . . . that the policy of not listing unmarried partners was the same, regardless of whether the decedent was 'living with a man, a woman, a Martian or a cat.'"

unmarried partners was the same, regardless of whether the decedent was living with "a man, a woman, a Martian or a cat."¹²⁶ This triggered a series of protests for the next two years, both in the gay and lesbian community and in the entertainment industry. Ultimately, the Daily Variety relinquished and will now list an unmarried survivor as a "longtime companion."¹²⁷

IT IS RECOMMENDED that the Los Angeles City Attorney send a copy of this report to state and national Newspaper Publishers Associations with a request that they survey their members regarding possible marital status discrimination in obituary policies. The policy of the Los Angeles Times could provide other newspapers with a model that does not discriminate against unmarried couples.

Correctional Facilities. Soon after the Consumer Task Force was convened, one energetic member contacted the Los Angeles Police Department to determine if any city jail policies discriminated on the basis of marital status.¹²⁸ Since most arrestees spend only two or three days in city jails before being transferred to county facilities, the member was referred to the Los Angeles County Sheriff's Department. County jails can house inmates for several months or even one or two years. The investigation turned up an emergency leave policy that does discriminate against unmarried couples.¹²⁹

Division Order #45 establishes procedures to be established when a request is received for an inmate to attend a funeral or visit a critically ill member of the inmate's immediate family. The order defines "immediate family" as "husband, wife, father, mother, child, stepchild, brother, sister, grandparents and grandchildren, or step or half brother or sister (as deemed appropriate by the Inmate Services Unit." Funerals or visits to critically ill

126. Los Angeles Times, "Supplement," p. 280.

127. Although the associate publisher of the Daily Variety declined an invitation to appear at a Task Force hearing or to give written testimony, he did confirm in a telephone interview that the exclusionary policy had been changed.

128. Investigation by Jay Westbrook, November 1989.

129. Inmate Removal Procedures for Family Emergency, "Supplement," p. 59.

"The order [allowing inmates to attend a funeral or visit a critically ill family member] is particularly harsh on lesbians and gay men who may have close long-term relationships but who can't qualify as a spouse."

persons are limited to Los Angeles County. Homicide suspects, inmates classified as escape risks, and those with state or federal prison holds are ineligible. Removal orders for qualifying inmates are coordinated through the Office of Religious Services.

Although this order is an appropriate humanitarian gesture which includes a very broad definition of family, it discriminates against unmarried couples whose relationships may be much closer than many listed in the definition. The order is particularly harsh on lesbians and gay men who may have close long-term relationships but who can't legally qualify as a spouse.

IT IS RECOMMENDED that the Office of Religious Services, in consultation with the Presiding Judge of the Superior Court's Criminal Division initiate a study to determine the feasibility of expanding the definition of "immediate family" in Division Order #45 so that inmates who have unmarried long-term family partners may be eligible for emergency leaves for a critical illness or funeral.

**"Consumer education is virtually absent
from the formal education of most students [in
California]."**

ENDING MARITAL STATUS DISCRIMINATION

This report documents widespread discrimination by businesses against unmarried individuals and couples. The extent of discrimination is ironic, considering that unmarried consumers constitute the majority of adults in Los Angeles.

Various recommendations have been proposed to remedy particular problems within specific industries. However, other remedial measures can be taken that are more generic. Education of consumers and business leaders, administrative reform, and aggressive law enforcement are the most obvious.

Education

Consumers. Consumer education is virtually absent from the formal education of most students. Consumers, both young and old, are bombarded daily by commercial marketing techniques in both the broadcast and print media. Consumer fraud is a widespread problem in California and nationally. As this report demonstrates, discrimination and unfair business practices are also major problems facing consumers.

The prevalent societal response to consumer fraud and unfair practices involves low-budget, after-the-fact, piecemeal reactions by some individual consumers, businesses, and law enforcement agencies. Generally, it's too little, too late. It's time for California to take a more progressive and preventive approach to consumer protection.

IT IS RECOMMENDED that state and local government agencies take a comprehensive and aggressive approach to consumer education and consumer protection. The following actions would be helpful:

* The Los Angeles City Attorney should convene a meeting with other government agencies involved with public education and with consumer protection to gain support for legislation that would authorize the state Department of Education to develop a "Model Curriculum on Consumer Education" for use in grades K through 12 in California's public schools. In addition to the Department of Education, other agencies should be invited to participate, such as the Los Angeles Unified School

**"Efforts to end marital status
discrimination against consumers can only be
truly successful with the voluntary cooperation
of the business community."**

District, state Department of Justice, and the state Department of Consumer Affairs.

* The Los Angeles City Attorney should seek funding from the City Council in next year's budget for the production and distribution of a brochure entitled "Marital Status Discrimination Against Consumers -- Your Rights and Remedies." The brochure could be made available for distribution by Council offices, the Commission on the Status of Women and Human Relations Commission, and by community organizations and consumer protection agencies.

* The Los Angeles City Attorney should distribute copies of this report to community organizations that provide activities and services to unmarried individuals and couples. The City Attorney should sponsor a community forum on marital status discrimination at which members of these organizations and other consumers are invited to attend.

Education of Businesses. Efforts to end marital status discrimination against consumers can only be truly successful with the voluntary cooperation of the business community. As this report demonstrates, many businesses have already taken note of marital status demographics and have made appropriate changes in their business policies and practices. Some are in the midst of change. Others are resistant. Programs to education businesses will provide the key to voluntary support for consumer protection against marital status discrimination.

IT IS RECOMMENDED that the following actions be taken to educate businesses about the dynamics and illegality of marital status discrimination against consumers:

* The Los Angeles City Council should require the City Clerk to distribute a notice on the illegality of discrimination against consumers to new businesses when they apply for a business permit. The Council should also require the City Clerk to include a notice regarding discriminatory and unfair practices against consumers to all existing businesses when the City Clerk annually mails out the "Business Tax Renewal" forms. The content of the notice should be prepared by the City Attorney's Office. Such a procedure was used this year to notify businesses of the city's "No Smoking Ordinance."

* The Los Angeles City Attorney should distribute copies of this report to all members of the boards of

"Three public officials deserve commendation for their efforts to combat marital status discrimination against consumers [Attorney General John Van de Kamp, San Francisco District Attorney Arlo Smith, and Los Angeles City Attorney James Hahn]."

directors of the Greater Los Angeles Chamber of Commerce, Hollywood Chamber of Commerce, and other chambers within the City of Los Angeles.

*** The Los Angeles City Attorney should offer to provide Chambers of Commerce and other business associations with speakers on the subject of marital status discrimination for presentations at luncheons and other meetings.**

Administrative Reform

Although various statutes have banned marital status discrimination against consumers as a matter of policy for many years, most administrative agencies that protect consumers have had little experience either in promulgating enforcement regulations, or in processing cases of discrimination, or both.

The state Department of Consumer Affairs has been silent on the subject of marital status discrimination. Although the state Department of Fair Employment and Housing has processed housing discrimination cases on this subject, it has done little with respect to other forms of marital status discrimination against consumers. As mentioned previously, the state Department of Social Services and the state Department of Health Services have promulgated ambiguous patient's rights regulations and, so far, have not added the term "marital status" to anti-discrimination regulations.

Leadership. Three public officials deserve commendation for their efforts to combat marital status discrimination against consumers. During the tenure of John Van de Kamp, the Attorney General's Office has published a booklet entitled "Unlawful Discrimination: Your Rights and Remedies." It informs readers regarding the specific laws, regulations, and court cases that prohibit marital status discrimination in the areas of employment, housing, insurance, and other business services. Thousands of copies of the booklet have been distributed.

IT IS RECOMMENDED that the Attorney General's Office update its booklet on Unlawful Discrimination and that copies of the updated version be distributed to consumers statewide.

San Francisco District Attorney Arlo Smith has promised to take an aggressive stance against marital status discrimination. He has testified at

**"The state department and state
commission on Fair Employment and Housing
should be commended for vigorously protecting
tenants against marital status discrimination."**

hearings of the Consumer Task Force. He has pledged to work closely with the San Francisco Human Rights Commission to combat discrimination against consumers. He also has promised to raise the issue of marital status discrimination at meetings of state and national district attorneys' associations, particularly to committees working on consumer protection issues.

Locally, City Attorney James K. Hahn has been most helpful in focusing public attention on this subject. He convened this Task Force, provided it with excellent staffing, personally appeared at some of its meetings, and has continually kept the media informed of issues being addressed in this study. The Consumer Task Force looks forward to his efforts to distribute this report and implement its recommendations.

IT IS RECOMMENDED that the Los Angeles City Attorney and the San Francisco District Attorney work together to develop materials and provide speakers on the subject of marital status discrimination against consumers to state and national associations of district attorneys and city attorneys.

Clarification of Public Policies. The area of public policy with the most clarity involves discrimination on the basis of marital status in rental housing. The state department and state commission on Fair Employment and Housing should be commended for vigorously protecting tenants against marital status discrimination.

Other areas of public policy are more ambiguous. Although the Insurance Commissioner issued a regulation against marital status discrimination nearly 15 years ago, that policy has not been translated into a reality in any meaningful way. It is heartening to see the current Insurance Commissioner beginning to take steps to strengthen consumer protection against such discrimination. Hopefully, her recent regulation on auto insurance will take effect and ultimately be expanded to all lines of insurance. As mentioned previously, agencies charged with protecting patients in hospitals and nursing homes, such as the state Ombudsperson, and state departments of Health Services and Social Services would implement recommendations directed to them by this report.

Locally, more could be done by the Los Angeles City Council. For example, the City of Los Angeles forbids businesses that receive city funds

"Just as the city refuses to give funds to businesses that have any dealings with South Africa, the city should not award contracts to companies that violate any anti-discrimination laws, whether it be discrimination against employees, tenants, or consumers."

and contracts from discriminating in their employment practices on the basis of race, religion, color, national origin, sex, disability, or sexual orientation. Marital status is conspicuously missing from the city contractor law. Two years ago the Family Diversity Report recommended that "sexual orientation, marital status, and medical condition" be added. The City Council responded by adding "sexual orientation." It's time to include "marital status" and "medical condition" since state law already prohibits such discrimination and the city contractor law is based on a policy of not awarding contracts or granting funds to employers who violate state civil rights statutes.

Furthermore, the City Council should strengthen the city contractor anti-discrimination law. Just as the city refuses to give funds to businesses that have any dealings with South Africa, the city should not award contracts to companies that violate any anti-discrimination laws, whether it be discrimination against employees, tenants, or consumers.

IT IS RECOMMENDED that the Los Angeles City Council take the following actions to prohibit discrimination by city contractors:

* The current city contractor anti-discrimination ordinance should be amended to include protections against discrimination on the basis of "marital status" and "medical condition."

* The ordinance should be expanded to prohibit discrimination by city contractors against tenants and consumers as well as employees.

Training of Personnel. Enforcement of civil rights statutes depends, in large measure, on the sensitivity and good will of the employees of regulatory agencies. Since there is a scarcity of case law and since regulations are often ambiguous, it would be expected that employees may not understand the legal and practical implications of business practices that discriminate against unmarried individuals and couples.

The Attorney General is the chief law enforcement officer of the State of California. As such, the Department of Justice not only has authority to enforce civil rights statutes, it provides advice to other state agencies that have concurrent jurisdiction. The Attorney General's Office should take the lead in developing training materials and conduct seminars on marital status discrimination against consumers. This, of course, would include the rights

"Unless there is an effort to coordinate services and ongoing communication among agencies with concurrent jurisdiction, consumer protection may 'fall through the cracks' in this administrative patchwork."

of consumers in general, specific examples of discriminatory practices in particular settings such as credit, insurance, housing, nursing homes, and hospitals, and detailed procedures for reporting, investigating, and remedying acts of marital status discrimination.

IT IS RECOMMENDED that the Attorney General's Office, in consultation with the state Department of Consumer Affairs and the state Fair Employment and Housing Department, develop training materials and conduct seminars on marital status discrimination against consumers. The materials and seminars should be made available to professionals licensed pursuant to the California Business and Professions Code as well as personnel employed by regulatory agencies such as the state Ombudsperson of the Department of Aging, state Department of Health Services, state Department of Social Services, and state Department of Insurance.

Coordination of Services. Several state and local government agencies have overlapping jurisdiction in connection with the enforcement of laws prohibiting discrimination. In the field of fair housing, the state department and state Commission on Fair Employment and Housing have jurisdiction to take remedial action, as do local district and city attorneys and the state Attorney General. Action against credit discrimination can be taken by the Attorney General and local city and district attorneys. While unfair insurance practices are primarily subject to regulation by the state Insurance Commissioner, jurisdiction has been expanded by Prop 103 to include city and district attorneys as well as the state Fair Employment and Housing commission and department. Other discriminatory or unfair practices by businesses are also subject to concurrent jurisdiction by several agencies. Patient's rights in hospitals and nursing homes are regulated by the state Ombudsperson and the state departments of Social Services, Health Services, and Developmental Services. The state department of Consumer Affairs oversees businesses and professionals licensed by the state.

The emergence of marital status discrimination as a concern to hundreds of thousands, if not millions, of California consumers, may produce bureaucratic gridlock. Unless there is a coordination of services and ongoing communication among agencies with concurrent jurisdiction,

"The state Fair Employment and Housing Department is the agency with the most experience and expertise in the field of governmental protection against discrimination . . . Agency attorneys are well versed in the law."

consumer protection may "fall through the cracks" in this administrative patchwork. Action must be taken to prevent this from happening.

The state Fair Employment and Housing Department is the agency with the most experience and expertise in the field of governmental protection against discrimination. Hundreds of cases are processed by the department each year. Staff has been trained to conduct investigations. Agency attorneys are well versed in the law. Policy for the department, and regulations, are established by the state Fair Employment and Housing Commission.

IT IS RECOMMENDED that the Commission and the Department of Fair Employment and Housing should take the lead in coordinating the activities of all state and local agencies with jurisdiction over marital status discrimination against consumers. Protocols for cross-referrals and sharing of information should be developed. Consumer protection should not suffer due to lack of communication or cooperation among these agencies.

"The Task Force has done its job by conducting a thorough investigation and issuing this report. However, the most challenging job lies ahead: implementation."

IMPLEMENTATION OF THIS REPORT

This report builds upon the work of the Los Angeles City Task Force on Family Diversity. It advances the goal of eliminating marital status discrimination from the marketplace by suggesting dozens of specific recommendations for education, administrative reform, and aggressive law enforcement. The success of these recommendations depends upon the good will of public officials, administrators, business leaders, and others, as well as helpful implementation strategies and mechanisms.

The Consumer Task Force is a voluntary association of individuals convened by the City Attorney. The Task Force has done its job by conducting a thorough investigation and issuing this report. However, the most challenging job lies ahead: implementation.

Widespread distribution of this report and ongoing communication with state and local agencies and private sector businesses and consumer organizations are essential components of a successful implementation program. Although the City Attorney will take the lead, additional funding and staffing will be required. To this end, the City Attorney should take measures to gain the support of the Mayor and City Council.

IT IS ALSO RECOMMENDED that the Los Angeles City Attorney take the following actions aimed at implementation:

*** The City Attorney should request nine members of the Consumer Task Force to serve as an Implementing Committee.**

*** The Implementing Committee should meet every two months with members of the City Attorney's Consumer Protection Unit and liaisons from the Insurance Commissioner and state Fair Employment and Housing Department to develop strategies for implementation and monitor progress.**

*** The City Attorney should reconvene the entire Consumer Task Force in March 1991 for an annual review of implementation progress.**

"The emergence of a new majority of households in the City of Los Angeles which contain unmarried adults (55%) underscores the need for more fairness in the consumer marketplace, a marketplace which has frequently favored the married over the unmarried."

THE COST OF FAIRNESS

This report documents the emotional and economic effects on unmarried consumers resulting from marital status discrimination in the marketplace. But what price will providers of goods and services pay to eliminate such discrimination from their business practices?

In some contexts, such as rental housing, for example, the cost of fairness does not involve money. Most landlords who refuse to rent to unmarried couples claim moral or religious reasons, not financial concerns. The protection of visitation rights in nursing homes and hospitals, or listing an unmarried survivor in an obituary notice, are other areas where the issue is that of equity and not economics.

In other contexts, the elimination of discrimination will have a positive economic impact on business. For example, credit unions that expand the definition of "family" in their by-laws will expand membership slightly and have a corresponding increase in revenue.

Experience is often the best teacher. The Consumer Task Force investigated several businesses that once discriminated against unmarried consumers but changed to a posture of nondiscrimination. Trans World Airlines and Holiday Health Spa are two examples of businesses that fall into this category. Neither has reported any negative economic consequence.

Theoretically, insurance is an area where economic costs may be significant. However, experience indicates otherwise. SAFECO affirmed that it does not include marital status in its underwriting criteria. For several years, the Automobile Club of Southern California has given a multiple-car discount to unmarried couples on the same terms as it has to married couples. Neither company has complained of resulting economic losses.

In any event, marital status discrimination should be eliminated from the marketplace even if significant economic adjustments must be made. Changing consumer demographics may dictate change despite administrative resistance. Furthermore, when marital status discrimination against consumers is pervasive, the fundamental right of individuals to marry or not to marry is infringed in a way that society should not tolerate. In other words, even if there is an economic cost associated with fairness, it is a price worth paying.

In some contexts, such as rental housing, the cost of fairness does not involve money. . . . In other contexts, [such as credit unions,] the elimination of discrimination will have a positive economic impact. . . . In any event, marital status discrimination should be eliminated from the marketplace even if significant economic adjustments must be made."

CONCLUSION

This report recognizes the diversity of lifestyle inherent in a pluralistic society, particularly one in which constitutional principles respect and protect the rights of individuals to life, liberty and the pursuit of happiness. The emergence of a new majority of households in the City of Los Angeles which contain unmarried adults (55%) underscores the need for more fairness in the consumer marketplace, a marketplace which has frequently favored the married over the unmarried. This report does not seek to undermine marriage in any way. Far from it. We seek to protect the marketplace as a level playing field -- open, accessible, and fair to all consumers. In addition, we favor the existing civil rights laws of this state which clearly prohibit discrimination against anyone on the basis of being married or being unmarried.

Inevitably, these findings which document new consumer demographics and favor a discrimination-free marketplace, may cause some confusion about our attitude toward the institution of marriage and its importance to society.

Not only does marriage have significant social dimensions, it often has brought tremendous emotional and spiritual satisfaction to persons who have chosen to become each other's spouse. However, not everyone marries. Some adults adopt vows of celibacy when they enter religious institutions. An increasingly large number of adults remain single throughout their lives. Some adults choose to cohabit outside of marriage. Others, such as same-sex couples, are precluded from marrying. Also, a substantial percentage of persons who do marry eventually separate and divorce. Of course, are also those who become unmarried due to the death of a spouse. These are the variety of unmarried individuals and couples that constitute the new majority of adult consumers in Los Angeles.

This report deals with critical issues of public policy. The creation of fair and reasonable public policies usually involves balancing the legitimate concerns of society with the constitutional rights of individual members of society. When fundamental rights are stake, social concerns must sometimes be modified or yield altogether.

The freedom to marry or not marry resides with the individual. . . . [C]oercive policies or practices must not interfere with basic constitutional rights such as [this]."

Marriage is a fundamental right protected by the right of privacy which is implicit in the federal Constitution.¹³⁰ The freedom to marry or not marry resides with the individual.¹³¹ In California, however, the protection of personal privacy does not depend on constitutional implications. California voters amended the state Constitution in 1972 to list "privacy" among other inalienable rights.¹³² California courts have repeatedly acknowledged a right of privacy in "matters related to marriage, family, and sex."¹³³

If the notion of a fundamental right has any meaning at all, the state must protect the individual's freedom of choice in connection with that right. For example, the right of privacy in the California Constitution requires the state to be evenhanded in the extension of benefits to women who are faced with decisions pertaining to procreation. The state may not, for example, provide a woman with medical services for childbirth but deny her such services for abortion.¹³⁴

The same constitutional principle applies in the context of the marriage choice. As one legal scholar wrote, "Coerced intimate association in the shape of forced childbearing or parenthood is no less serious an invasion of the sense of self than is forced marriage or forced sexual intimacy."¹³⁵ In other words, coercive policies or practices must not interfere with basic constitutional rights such as marriage and procreation.

Unlike the federal Constitution which merely protects individuals from unreasonable governmental actions, our state constitutional right to privacy is much broader in its scope. It provides protection against privacy

130. Zablocki v. Redhail (1978) 434 U.S. 374, 384-385.

131. Loving v. Virginia (1967) 386 U.S. 1, 12.

132. Cal.Const., Art. I, Sec. 1.

133. People v. Belous (1969) 71 Cal.2d 954, 963; Committee to Defend Reproductive Rights v. Myers (1981) 29 Cal.3d 252, 263.

134. Myers, *supra*, note 133, at pp. 284-285.

135. Prof. Kenneth Karst, "The Freedom of Intimate Association," 89 Yale Law Review 624, 641 (1980).

"California has a strong public policy to protect the freedom of choice of individuals to marry or not to marry from outside interference, regardless of whether the coercive action stems from the public or private sectors of society."

infringements committed by private businesses as well.¹³⁶ California has a strong public policy to protect the freedom of choice of individuals to marry or not to marry from outside interference, regardless of whether the coercive action stems from the public or private sectors of society.

It is true that an isolated and single discriminatory regulation may not pose a direct and substantial interference with an individual's right to marry or not to marry.¹³⁷ However, as this report demonstrates, it is not the discriminatory practice of one company that is at issue. Discrimination on the basis of marital status is pervasive among many businesses and industries, including those that provide goods or services such as landlords, financial institutions, insurance companies, health clubs, and airlines. The cumulative effect of this pattern of discrimination has the effect of rewarding those who succumb to the pressure to marry and punishing those who resist. Since it results from the exercise of a fundamental right, a person's marital status should not be a decisive factor in the distribution of social or economic benefits in a free society.

California has a well-established public policy to foster and promote the institution of marriage.¹³⁸ Perpetuating discriminatory rules against unmarried individuals and couples is not an appropriate way of carrying out that policy.¹³⁹ In other words, the state's policy in favor of marriage does not imply a corresponding policy to discriminate against individuals in nonmarital relationships.¹⁴⁰

California courts have ruled that the state has no legitimate interest in using marital status as a means of punishment.¹⁴¹ For example, the state

136. Wilkinson v. Times Mirror (1989) 215 Cal.App.3d 1034 (publishing company); Porten v. University of San Francisco (1976) 64 Cal.App.3d 825; Cutter v. Brownbridge (1986) 183 Cal.App.3d 836 (licensed psychotherapist); Miller v. NBC (1986) 187 Cal.App.3d 1463 (television network).

137. McCourtney v. Cory (1981) 123 Cal.App.3d 431, 437-438.

138. Marvin v. Marvin (1976) 18 Cal.3d 660, 683.

139. Ibid.

140. Norman v. Unemployment Ins. Appeals Board (1983) 34 Cal.3d 1, 9.

141. In re Marriage of Gray (1988) 204 Cal.App.3d 1239, 1251.

**"The repeal of California's laws concerning
'illegitimate' children is another example of how
current public policy disfavors the imposition of
punishments and rewards based on marital
status."**

may not attempt to force spouses to remain in a "dead" or destructive marriage.¹⁴² Foreshadowing the advent of California's "no fault divorce" laws, the state Supreme Court once wrote:¹⁴³

"If the parties are permitted to dissolve a marriage legally when the legitimate objects of that marriage have been destroyed, they will be able to build new lives and new homes which may possess the stability and happiness the previous relationship lacked. At the very least they will not be forced into improper relationships by the very law they, and their children are admonished to respect. That this result is of greater benefit to the public welfare than the enforced continuation of a status which has been totally repudiated by the parties is obvious."

The repeal of California's laws concerning "illegitimate" children is another example of how current public policy disfavors the imposition of punishments and rewards based on marital status. Formerly, a child whose parents were not married at the time of his birth was considered "illegitimate."¹⁴⁴ As did most states, California had an elaborate system dealing with "legitimization" and inheritance rights. However, more than 20 years ago, lawmakers realized the unfairness of this system and began to dismantle it.¹⁴⁵ Under current law, a parent and child relationship extends equally to every child and to every parent, regardless of the marital status of the parents.¹⁴⁶

The California Legislature has recognized that marital status discrimination is against public policy for other reasons as well. Such discriminatory business practices contribute to domestic strife and unrest and adversely affect the substantial interests of the public as well as the

142. Hull v. Superior Court (1960) 5 Cal.Rptr. 1, 5.

143. Ibid.

144. People v. Sorenson (1968) 66 Cal.Rptr. 7, 13.

145. Former Civil Code Sections 193-195, dealing with illegitimate children, were repealed in 1965.

146. Civil Code Section 7002 was enacted in 1975.

"Given the fact that diversity is the hallmark of contemporary family relationships, it may be that the core secular values underlying a public policy promoting marriage may be better served, and eventually subsumed by, public policies promoting stable family relationships, regardless of structure."

victims of such discrimination.¹⁴⁷

The Consumer Task Force has considered and balanced the state's public policy promoting marriage with that protecting individual rights and freedom of choice. In the balance, the Task Force has concluded that marital status discrimination should be eliminated from consumer transactions. In reaching this result, the Task Force is not suggesting that married persons and unmarried persons must be treated identically for all purposes and in all contexts.

Given the fact that diversity is the reality of contemporary family relationships, it may be that the core secular values underlying a public policy promoting marriage may be better served, and eventually subsumed by, public policies promoting stable family relationships, regardless of structure.

However, to the extent that a public policy promoting marriage may remain valid and viable, that policy is sufficiently protected by laws creating presumptions favoring marriage in contexts that may be essential to an orderly society. Those contexts may include spousal and child support, transfer of property upon dissolution or death, and the making of critical decisions involving an ill or incapacitated partner, or the disposition of remains upon death. In all of these areas, the law may legitimately give a spouse priority over all other persons, that is, in the absence of written directives to the contrary.

However, discrimination against unmarried consumers is not essential to social stability. In fact, in Los Angeles, where unmarried adults outnumber those who are married, or statewide, where a near majority of adults are unmarried, such discrimination has the opposite result. It creates social and economic friction. Therefore, discrimination against unmarried consumers is, and should remain, illegal. If anything, laws prohibiting marital status discrimination, and their enforcement, should be strengthened.

147. Government Code Section 12920.

APPENDIX

CONSUMER TASK FORCE ON MARITAL STATUS DISCRIMINATION

Supplement to Final Report

(Background Papers and Source Materials)

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Consumer Task Force on Marital Status Discrimination

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AGENDA FOR PUBLIC HEARING ON NOVEMBER 28, 1989

| Time: | Presenter: | Topic: |
|--------------|--|---|
| 1:00 p.m. | City Attorney James Hahn | Welcome |
| 1:05 p.m. | Thomas F. Coleman, Chairperson Consumer Task Force | Opening Remarks |
| 1:15 p.m. | Arlo Smith, District Attorney of San Francisco | Consumer Protection as a Statewide Issue |
| 1:30 p.m. | *Bill Press, Commentator KABC-Television | Unfair Insurance Practices; Remedies |
| 1:45 p.m. | *Conway Collis, Member State Board of Equalization | Unfair Insurance Practices; Remedies |
| 2:00 p.m. | *Walter Zelman, Exec. Director Calif. Common Cause (on leave) | Unfair Insurance Practices; Remedies |
| 2:15 p.m. | Kyle Millager, City Employee and Credit Union Consumer | Credit Discrimination against Unmarried Couples |
| 2:30 p.m. | Michael Cautillo, intern from USC Law Center | Report on Discrimination by Los Angeles Businesses |
| 2:45 p.m. | Valeria Morea, airline consumer | Discrimination by Frequent Flyer Programs |
| 3:00 p.m. | Robert Wright, Automobile Club of Southern California | Unmarried Couples: Club Membership / Auto Policies |
| 3:15 p.m. | Rick Nordin, Greater Los Angeles Zoo Association | Joint Memberships Without Marital Status Bias |
| 3:30 p.m. | Cheryl Overstreet, SAFECO Insurance Company | Insuring Unmarried Individuals and Couples |
| 4:00 p.m. | Public Comments | |

* Candidate for State Insurance Commissioner



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Office of the City Attorney

Los Angeles, California

AGENDA FOR PUBLIC HEARING ON DECEMBER 18, 1989

City Council Chambers, Los Angeles City Hall

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| Time: | Presenter: | Topic: |
|--------------|--|---|
| 9:20 a.m. | Thomas F. Coleman, Chairperson Consumer Task Force | Purpose & Methodology of the Consumer Task Force |
| 9:30 a.m. | Robert Wilder/Verna Terry, victims of housing bias | Tenants' Perspective of Marital Status Bias |
| 9:45 a.m. | Stephanie Knapik, Westside Fair Housing Council | Housing Discrimination in the City of Los Angeles |
| 10:00 a.m. | Wanda Kirby, State Department of Fair Employment and Housing | Prevention, Intervention and Remedies |
| 10:30 a.m. | Jay Westbrook, City/County Areas Agencies on Aging | Board & Care Homes for Older Adults |
| 10:45 a.m. | Joseph Rhine, Managing Atty., Protection & Advocacy Inc. and Barbara Waxman Disability Rights Advocate | Marital Status Bias Against Developmentally Disabled, Mentally Ill, and Physically Disabled Adults Living in Community Care Homes |
| 11:30 a.m. | Tony Melia, agent, National Business Ins. Agency | Securing Insurance for Unmarried Couples |
| 12:15 p.m. | Nancy Matthews, consumer and victim of marital status bias | Economic Discrimination by Health Clubs |
| 12:45 p.m. | Public Comments: | |



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AGENDA FOR PUBLIC HEARING ON JANUARY 29, 1990

City Hall Tower, Los Angeles City Hall

| Time: | Presenter: | Topic: |
|--------------|---|--|
| 9:15 a.m. | Juan Navarrette, lifemate of long-term hospital patient | Lifemate's Perspective of Marital Status Bias |
| 9:30 a.m. | Christopher Sands, victim of bias by newspaper | Survivor's Perspective of Marital Status Bias |
| 9:45 a.m. | William Bartlett, Counseling Manager, Aids Project L.A. | Problems of Hospital Patients and Survivors |
| 10:00 a.m. | James Ludlam, attorney, Hospital Council of Southern California | Hospital Policies on Unmarried Patients |
| 10:15 a.m. | Frank Haswell, Exec. V.P., Forest Lawn Memorial Parks | Mortuary/Cemetery Policy on Unmarried Decedents |
| 10:30 a.m. | Gordon Lowe, Manager, Classified Ad Department, Los Angeles Times | Policy on Obituary Notices for Unmarried Decedents |
| 11:00 a.m. | Jan Stone, Attorney at Law | Legal Protections for Unmarried Couples |
| 11:30 a.m. | Robert Ciulok, Chief, L.A. County Sheriff's Department | Sheriff's Policy on Family Emergencies |
| 11:45 a.m. | Seymour Pizer, attorney and expert in credit union law | Credit Union Membership for Unmarried Couples |
| 12:00 p.m. | Jay Westbrook, City/County Area Agencies on Aging | Unmarried Seniors in Long Term Care |
| 12:15 p.m. | Joesph Rhine, Managing Atty., Protection and Advocacy | Unmarried Disabled Adults in Long Term Care |
| 12:30 p.m. | Public Comments | |
| 1:00 p.m. | Discussion by Task Force Members | |
| 1:30 p.m. | Meeting Adjourns | |

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