

Is Your Marriage Governed By The Corporations Code?

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The California Corporations Code is a strange place to look for guidance on the rights and obligations of spouses during marriage. However, Section 721(b) of the Family Code provides that the relationship between spouses "is a fiduciary relationship subject to the same rights and duties of nonmarital business partners, as provided in Sections 16403, 16404, and 16503 of the Corporations Code . . .". The statute further provides that that this relationship includes, but is not limited to the following:

- Providing each spouse access at all times to any books kept regarding a transaction for the purposes of inspection and copying.
- Rendering upon request, true and full information of all things affecting any transaction that concerns the community property. Nothing in this section is intended to impose a duty for either spouse to keep detailed books and records of community property transactions.
- Accounting to the spouse, and holding as a trustee, any benefit or profit derived from any transaction by one spouse without the consent of the other spouse that concerns the community property.

The referenced sections of the Corporations Code are part of the Uniform Partnership Act of 1994, Cal. Corp. Code § 16100 *et seq.* Section 16403 concerns partnership records and inspection and Section 16404 prescribes the fiduciary duties of partners.

I believe that the reference to Section 16503 is in error. That statute concerns the effect of a transfer of a transferable interest. Section 721 previously referred to Sections 15019 (partnership books), 15020 (right to demand information), 15021 (partner accountable as a fiduciary) and 15022 (right to account) of the 1914 Uniform Partnership Act, which was replaced in 1996 by the 1994 act. 1996 Cal. Stats. ch. 1003. In 2002, the legislature purported to update the references to the repealed statutes. 2002 Cal. Stats. ch. 310. However, Section 16503 is not the analogue of any of former sections.

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