Regarding AB 362

Dear Committee Members:

My name is Peter Jaquette. I am a former Chairman of the Nevada State Bar Family Law Section, a Nevada State Bar Certified Specialist in Family Law, and a resident of Carson City who has practiced exclusively family law for approximately 39 years. In my career, I have prepared or reviewed nearly 1,000 divorce decrees and marital settlement agreements.

I speak in support of AB 362. This Bill is sponsored by the Family Law Section of the Nevada State Bar. This bill codifies existing Nevada Case Law with one clarification. The need for the clarification arose in the recent Nevada Supreme Court Case of *Doan v. Wilkerson*, 327 P.3rd 498 (2014).

Nevada has a substantial line of cases indicating that any item of community property omitted from the divorce proceedings remains the joint property of the parties, held as tenants in common, and subject to later division. The *Doan* decision makes a distinction between community property omitted from the divorce decree, and community property omitted from "the divorce proceedings." Most of us in the family law section consider that a very poor distinction. Community property, even if it is disclosed or "litigated" in the divorce process, is still joint property owned by the parties, until it is adjudicated in the final decree.

The *Doan* decision invited the Nevada Legislature to clarify the issue:

> "It is up to the Legislature whether to create an action, or permit continuing jurisdiction, for partitioning property that was merely left out of the divorce decree: California has done so: " A party may file a post judgment motion . . . in order to obtain adjudication of any community estate asset or liability omitted . . . *by the*

judgment." Calf. Fam. Code Section 25556 (West 2014). *Doan,* paragraph *37.* Emphasis added.

Whether an asset is omitted from the litigation completely (i.e. never disclosed by a party or the parties) or whether it is disclosed and omitted from the decree, is still a piece of community property that has not been adjudicated.

Divorce litigation typically consists of exchanging hundreds or thousands of pages of documents, completing many detailed financial forms and sifting through years or decades of marriage trying to identify all of the marital assets. Lawyers and clients are human. Errors and mistakes can be made. It is very easy to forget a piece of community property entirely throughout the litigation. It is also very easy to forget to include an item of community property in the final agreement or decree, even if it had been disclosed or discussed earlier in the litigation. These are mistakes (or perhaps fraudulent non-disclosure), and the result is a less than complete disposition of a couples assets.

AB 362 makes it clear if the omission occurs in a decree or judgment, a party has a remedy, even if the item was disclosed during the litigation in large red capital letters or in the fine print of a thousand pages.

AB 362 is consistent with the laws of not only California, but each of the other community property states, all of which allow post judgment relief to divide an omitted asset. The *Doan* decision is a mistaken one, and this bill will guarantee that community property rights cannot be lost in a legal action, by a simple error, mistake or omission, or by a party's concealment of an asset.

Thank you for your time and consideration.