



# Forensic Accounting Today

Newsletter of Ron J. Anfuso, CPA/ABV, An Accountancy Corp.

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Issue 20

## Expert Witness Testimony: Why My Clients Tell Me They Are Pleased

Perhaps, on days you are scheduled to appear in court, you wake up in the morning and say to yourself, “Yes... I’m in trial today and I can’t wait. This will be an exciting challenge and things will work out fine for my client.” If this is your attitude, you understand how I feel about what I do.

Throughout my childhood, I seemed to possess a passion to plan, organize and execute strategies. When a project involved making a presentation in front of a class, I typically would prepare myself thoroughly and practice my presentation until I felt confident I could capture and emotionally appeal to my teacher and classmates. As a result, I invariably achieved my aim, and, as I matured, my confidence and enthusiasm for speaking in front of groups grew.

Today, the stakes are certainly higher. However, I am at ease with the level of responsibility I am routinely presented and continue to possess energy and passion. As of this writing, I have made hundreds of appearances as an expert witness. With each passing opportunity, I try to evaluate my effort and sharpen my skills a little more. The self discipline, method of preparation and focus I developed provide me the confidence I need to draw from my pool of knowledge. Perhaps, this is what enables me to handle curves thrown my way by aggressive attorneys. Yes, I still have passion for what I do and enthusiastically look forward to new opportunities.

Ron

## Marriage Dissolution and Life Insurance Valuation

By Ron J. Anfuso, CPA, ABV, CFF, CDFA, FABFA\*

Establishing the value of a life insurance policy can be one of the more muddled issues to deal with when determining property division. Although there are several types of life insurance policies, not all forms give rise to property division issues.

Generally, there are two categories of life insurance you need to consider— *whole life* and *term life*. Whole life policies normally build cash value and continue coverage after premiums have been paid in full. On the other hand, term life insures the individual for an agreed upon period of time and then terminates.

In California, life insurance is considered community property. As a general rule, however, if a policy is purchased prior to marriage and is paid with separate funds, the policy remains separate property. In contrast, if a policy was purchased during the marriage and all premiums were paid with community funds, the policy is deemed part of the community. Issues can arise, however, when premiums have been paid with separate *and* community funds. In such instances, you may wish to consult with a Forensic Accountant.

### Whole Life Policy Valuation Considerations

The value of a whole life policy needs to be determined before the finalization of the divorce settlement. In most instances, a whole life policy is valued at its cash surrender value at the time of valuation of property. The court will divide the worth of the policy between the divorcing spouses unless a different agreement had been reached by the parties prior to the settlement action.

**Surrender Charges:** Some whole life policies have a “surrender charge”. The amount of this fee usually diminishes with the age of the policy. For Family Law purposes, however, the value of the policy should not be lowered to reflect the surrender charge. This charge may never need to be paid per the terms of the policy, as the policy may remain in force long after dissolution. {See *In Re Marriage of Drivon* (1972) 28 CA3d 896 and *In Re Marriage of*



**“That ‘tough’ opposing counsel LAUGHED when I sat down at the witness stand.”**

## “Until she heard my testimony”

There are several reasons why Ron J. Anfuso is so effective in court. One that sets him apart from other forensic accountants is how much he welcomes being challenged by the most difficult circumstances. It’s all about his confidence, preparation, credibility and experience.



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## Just 1 hour

Spend just one hour with Ron. Enjoy breakfast or lunch on him.

That’s all it takes to discover why

**Ron J. Anfuso, CPA/ABV is the better choice.**

Call or e-mail us to set up a time.

*Stratton (1975) 46 CA3d 173}.*

**Taxes:** The value of a whole life policy should only be reduced due to potential taxes, if the tax is *immediate and specific*. This is because, in most instances, the policy will not be canceled at the time of dissolution. {See *In Re Marriage of Fonstein (1976) 17 CA3d 738*}.

**Insurability questions:** If the insured individual has questions concerning insurability, such as due to health issues, the value of the policy needs to be more closely analyzed. In such cases, it is not as simple as to whether the individual is insurable, as this matter has been addressed in several Appellate decisions.

## Term Insurance Valuation Considerations

Term life insurance has no cash surrender value. Thus, it would seem as though term life policies should not be considered having value when determining property value. Courts in California, however, have been inconsistent in their treatment of term life insurance valuation.

For example, at least one court has determined that a term life policy has economic value based on its replacement cost, face value and potential to be converted into a whole life policy. {See *In re Marriage of Gonzalez, 168 Cal. App. 3d 1021, 214 Cal. Rptr. 634 (1985)*}. In contrast, another court ruled that term life insurance only has value after the death of the insured and, as a result, is not divisible in a Family Law matter. {See *In Re Marriage of Lorenz (1983) 146 CA 3d 484, 468*}.

Due to the inconsistency of the Courts, you could argue the validity of several different positions concerning the value of term life insurance. A mistake would be to only consider the findings of one reported case in formulating your argument, as this could result in a non-optimal outcome for your client. Rather, consideration of all of the factors that have been addressed by the Courts will enable you to make a better analysis. Therefore, you may wish to consult with a Forensic Accountant to help formulate an argument that should prove favorable for your client.

## Need a Financial Expert to Speak to Your Study Group or Bar Event?

Ron J. Anfuso can address any Forensic Accounting topic, including Moore/Marsden; marital standard of living and support needs analysis; financial specialists and Collaborative Law; gross cash flow available for support; DissoMaster™; divorce tax issues; divorce: what to expect; and business valuations. To discuss your group’s needs, call Ron today!