

*In Re Marriage of Fossum*

Let's first skip past the not unfamiliar facts and analysis of putting title to the family home in one spouse's name for purposes of getting a better interest rate or to refinance. Let's get to a practical new holding: unilateral access and expenditure of credit card funds without notice to the other spouse is held to be a breach of fiduciary duty. And guess what? Attorneys fees for breach of fiduciary duty leads to a mandatory award of attorney's fees under *Family Code* Section 1101(g). Wow. Never saw this linkage before. Here is a new and very powerful weapon. Does it matter whether the secretive credit card expenditures were for the benefit of the community? In *Fossum*, the use of the funds was in dispute. The fact of non-disclosure triggered the breach of fiduciary duty. The trial court's refusal to award fees was reversed, the appellate court holding that an award of attorney's fees is mandatory under Section 1101(g), even if the conduct did not rise to the level warranting an award of attorney's fees as sanctions under Section 271. Justice Rothschild's concurring and dissenting opinion doesn't like the mandatory dictate of the fee award, opining that the Legislature surely intended a discretionary standard, as provided in other fee award statutes. The dissent felt that too strict a rule could lead to unjust results, making innocent violations easy to commit. Nevertheless, the *Fossum* majority leaves no doubt: prove a breach of fiduciary duty and an attorney's fee award will follow. Better watch those credit cards.

Now let's go back to the title dispute. Wife put title in husband's name to gain a more favorable interest rate on purchase and to facilitate a refinance, to circumvent her own questionable credit rating. Why didn't husband then re-transfer title into joint names? She failed to comport herself in the way he believed his wife should "behave." He had a list of conditions for the re-transfer, that his wife "behave" in a certain way and become a "Godly women" with a "heart...free of sin." Not a great surprise that husband lost. Although title was in his name, the court held the property to be community property.

Bookmark *Fossum* for future reference on both points.

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