

Opinion No. 53-5630

January 8, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Tony Mignardot, Asst. Commissioner Motor Vehicle Department Bureau of Revenue Santa Fe, New Mexico

{*7} On January 6, 1953, you addressed to this office an inquiry concerning the manner in which certain motor vehicle titles are held and the method your office should require in the transfer of them. Both of the questions involved a husband and wife holding some semblance of title to the vehicle. We will answer your questions in the order presented.

1. The first question is, in the event a husband and wife hold title to a motor vehicle in the following manner, to-wit,

Mr. Jones &/or Thelma Jones, what signatures are necessary for the transfer of said vehicle?

The "and/or" phrase has been condemned repeatedly by extremely learned courts. Its use is absolutely forbidden in legal pleadings and other documents presented to a court of law. **State v. Smith, 184 P. 2d 301, 51 N.M. 328.** The reason for this is that the symbol is equivocal. It has not been treated with quite so much vehemence in the case of contracts and powers of attorney, but is viewed with disfavor. **State ex rel Adler v. Douglas, 90 SW 2d 1179, 339 Mo. 187; Thompson v. Commercial Life Insurance Company, 23 So. 2d 539, 198 Miss. 515.**

Together with the disfavor exhibited by the courts in construction of this term the community property aspects of our law is such that confusion caused by the term is quite apparent. It is stated in 65-401 N.M.S.A., 1941, as follows:

"All other real and personal property acquired after marriage by either husband or wife, or both, is community property; but whenever any real or personal property, or any interest therein or encumbrance thereon, is acquired by a married woman by an instrument in writing the presumption is that title is thereby vested in her as her separate property. And if acquired by such married woman and any other person the presumption is that she takes the part acquired by her as a tenant in common, unless a different intention is expressed in the instrument; except, that when any such real or {*8} personal property is acquired by husband and wife by an instrument in writing in which they are described as husband and wife, unless a different intention is expressed in the instrument, the presumption is that such property is community property of said husband and wife. The presumptions in this section mentioned, are conclusive in favor of any person dealing in good faith and for valuable consideration with such married woman or her legal representatives or successor in interest and regardless of any change in her marital status after acquisition of said property. "Provided; that neither the

husband of such married woman, nor his heirs or assigns shall commence or maintain any action to show that such real or personal property which was presumed under any prior statute to have been the separate property of any such married woman was community property or to recover said property if the same has been conveyed, sold or contracted to be sold by said married woman prior to July 1, 1947."

Thus the failure to state the relationship of husband and wife creates a presumption that the wife owns one-half of the vehicle and has a community interest in the half owned by her husband.

For that reason, in the event a title is held in the name of John Jones "and/or" Thelma Jones it will be necessary to obtain signature of both the husband and the wife.

If, however, the designation on the title is such that it is evident upon the fact of that title that the parties are married, for instance,

Mr. John Jones and Thelma Jones, his wife,

or

Mr. and Mrs. John Jones,

or

John Jones and Thelma Jones, husband and wife,

then and in that event the transfer may be made by the husband only. Sec. 65-401 N.M.S.A., 1941 Comp. This is by reason of the husband's status as manager of the community property and his ability to transfer personal property belonging to the community.

2. The second example given is the case wherein the title is held as follows, to-wit:

Mr. John Jones and Thelma Jones. By reference to the above statute as set out (65-401 N.M.S.A.) this title is clearly held in common. By this we mean that there is a joint interest and full and complete title cannot be conveyed without the signature of both parties.

It is our opinion that in example No. 1 the necessary method for the complete transfer of the title would be to require the signature of both parties regardless of the symbol "&/or".

It is our opinion that no title can possibly be transferred in the second example without the signature of both parties.

We sincerely hope that this answers your inquiry and that we may be of service to you in the future.

By: Fred M. Standley

Asst. Attorney General