

FEDERAL ELECTION COMMISSION

11 CFR Parts 100, 110, and 9003

Candidate's Use of Property in Which Spouse Has an Interest

AGENCY: Federal Election Commission.

ACTION: Final rule; Transmittal of Regulations to Congress.

SUMMARY: The Commission has transmitted regulations to Congress to govern the application of the Federal Election Campaign Act of 1971, as amended (2 U.S.C. 431 *et seq.*), to a federal candidate's use of property in which his or her spouse has an interest. The regulations address the definitions of "contribution" and of "personal funds" of a candidate.

2 U.S.C. 438(d) requires that any rule or regulation proposed by the Commission to implement Chapter 14 of Title 2, United States Code be transmitted to the Speaker of the House and the President of the Senate prior to final promulgation. If neither House of Congress disapproves the regulation within 30 legislative days after its transmittal, the Commission may finally prescribe the regulations in question. The following regulations were transmitted to Congress on April 22, 1983.

EFFECTIVE DATE: Further action, including the announcement of an effective date will be taken after the regulations have been before Congress 30 legislative days in accordance with 2 U.S.C. 438(d).

FOR FURTHER INFORMATION CONTACT: Susan E. Propper, Assistant General Counsel, 1325 K Street NW., Washington, D.C. 20463, (202) 523-4143 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: On July 20, 1982, the Commission published a Notice of Proposed Rulemaking amending and adding to the regulations pertaining to a candidate's use of property in which the spouse has an interest. (47 FR 31390. July 20, 1982) No public comments were received during the thirty day comment period.

Explanation and Justification of Regulations Concerning a Candidate's Use of Property in Which Spouse has an Interest

The revisions primarily address two situations involving loans obtained by the candidate for use in a campaign. In the first situation, the loan is acquired on the basis of property owned jointly with the candidate's spouse. In the second situation, the signature of the spouse is required on the loan instrument to waive some statutory non-ownership interest such as dower or curtesy. A third situation covered by these revisions involves the drawing of funds from assets such as jointly held bank accounts or the proceeds from liquidating jointly held stock.

The revisions carve out a narrow area to allow for the use of property in which the candidate's spouse has an interest or

to allow for spousal signature on a loan without violating the contribution limits. This is implemented in 11 CFR 100.7(a)(1)(i) by adding a new subsection (D) which states that a signatory spouse will not be considered a contributor if the value of the candidate's share of the property used as collateral or as a basis for the loan equals or exceeds the amount of the loan to be used for the candidate's campaign. In addition, the standard set out in subsection (D) is applied as an exception to those parts of §§ 100.7(b)(11) and 100.8(b)(12) which classify endorers and guarantors as contributors.

The revisions also clarify the definition of "personal funds" of a candidate as set out in §§ 110.10(b) and 9003.2(c)(3). By changing the term "right of beneficial enjoyment" to "equitable interest" the Commission is using a term which more specifically applies to an ownership or pecuniary interest that is not one of legal title. By reordering the criteria defining "personal funds," it is made clear that the criteria of "legal and rightful title" and "equitable interest" must each be linked with "legal right of access to or control over." The latter criterion is the standard set out in the legislative history of the 1974 Amendments to 18 U.S.C. 608 pertaining to the limitations of expenditures of personal funds by a candidate, also cited in *Buckley v. Valeo*, 424 U.S. 1, 51, 52, n.57.

Finally, the revisions add a subsection (3) to the "personal funds" definition in 11 CFR 110.10(b) and a subsection (iii) to the "personal funds" definition in § 9003.2(c)(3) in order to address the concept of "personal funds" in joint ownership situations. These new provisions permit a candidate to use the full value of his or her share of assets jointly owned with a spouse without the spouse being considered a contributor. If there is no written instrument indicating the candidate's ownership share of the property, the candidate will be considered to own one-half of the value of the property under these rules. This 50% rule would apply in community property states, as well as in non-community property states.