

Issues Involved in the Division of Property

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Separate Property

Separate property is either owned or acquired by a spouse before marriage or acquired by a spouse during marriage by gift or inheritance. The date of acquisition and the source of the property control this determination, not how the property is eventually paid for. For example, if one spouse owned a car before getting married, it is considered that spouse's separate property, even if it was paid off during the marriage. A court has no authority to take a spouse's separate property from him or her at the time of divorce.

Legally, gifts include any present given from one spouse to another during the marriage, even if the item was purchased with community funds. If a gift or inheritance was given to both spouses from another party, that item is separate property, but each spouse has a fifty percent interest in that piece of property.

Separate property can change forms without changing how it is considered as property. For example, if a spouse uses cash that earned before the marriage purchase an item during the marriage, then that item is still considered separate property.

Community Property

Community property is any property acquired by either or both spouses during marriage by means other than gift or inheritance. Items purchased during a separation also fall into this category since the marriage still legally exists.

In Texas, earnings from separate property are deemed community property. For example, if cash acquired before the marriage earns interest during the marriage, the amount of interest is considered community property, even though the original amount remains separate property.

The court has the authority to divide community property in any manner that it deems to be fair and equitable.

Issues Involved in the Division of Property (Cont.)

Debts and Tax Liabilities

Debts and liabilities incurred before marriage remain the debt or liability of the original party. Debts incurred during marriage are divided between both parties at the time of divorce. One spouse may be required to assume a debt incurred solely by another spouse during marriage. Debts created during separation are usually awarded to the spouse who incurred the debt.

Contingent liabilities are also taken into account. These include past income tax liabilities, which may arise in the future if either party is audited and tax liabilities for the year of divorce.

Reimbursement

At the time of divorce, three different estates may exist; husband's separate property estate, wife's separate property estate and the community estate. Each of these estates can make a claim for reimbursement against the other estates.

For example, if separate property of one spouse was paid for during the marriage using funds that were community property, the other spouse can request that those community funds be paid back. Reimbursement is not mandatory, so it must be agreed to in mediation or ordered by a court.

Tracing

An accounting method called tracing is used to determine if property is separate or community and assign rights to reimbursement between each of the marital estates.

Commingling

The doctrine of commingling states that if funds in an account contain both separate property and community property have been so mixed that a clear segregation by tracing is not possible, then the entire account will be characterized as community property.

*The above does not constitute specific legal advice.
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