

Texas Community Property

The community property system, which is governed by Texas case law and statutes, is mandatory for all married couples in Texas, whether the marriage is by civil law or by common law. Likewise, when a husband and wife who are nonresidents of Texas, purchase property in Texas, the laws of the State of Texas would govern (as to that property), and the property would be considered community property. However, property in other states, acquired by married couples who subsequently move to Texas, is governed by the case law of the state in which the property is located. Further, the system does provide statutory methods allowing spouses to divide community property into separate property.

To understand more clearly what constitutes community property, it is necessary to know what constitutes separate property. Sections 5.01 and 5.02 of the Texas Family Code set forth the following:



The Law

The concept of "community property" in Texas derives from the influence of Spanish Civil Law which held that during marriage spouses are "as one." Thus, under the Texas community property system, all property acquired by husband and wife during marriage is the community (or common) property of both spouses equally, except for property defined as separate property by statute.

A spouse's separate property consists of:

- Property owned or claimed by the spouse before the marriage;
- The property acquired by the spouse during marriage by gift, devise, or descent; and
- The recovery for personal injuries sustained by the spouse during marriage, except any recovery for loss of earning capacity during marriage.

Property which cannot be proven to be separate is presumed to be community, with one-half owned by each spouse, regardless of whether both spouses work or who earned the money used to purchase the property.

Other significant provisions of the Texas Family Code which affect community property include the following:

- Whether the homestead is the separate property of either spouse or is community property, neither spouse can sell, convey, or encumber it without the joinder of the other spouse except as provided by the Code or by other rules of law.
- When one of the spouses is found judicially incompetent, the Texas Family Code provides for a remedy allowing sale of property without the joinder of the incompetent spouse, and there are sections of the Code which also cover situations where a spouse has either abandoned the remaining spouse, has disappeared or is missing in public service (in action).
- The Texas Family Code also provides a section for postnuptial and prenuptial marital agreements. In essence, parties to a marriage can agree to predetermine the community or non-community character of their property so long as it is not a detriment to the husband or wife's creditors.

However, prenuptial agreements are documents requiring very special legal skills and should be prepared only by legal experts.