

- Texas Marital Property Issues -

PROPERTY

- There are two major categories of property in the State of Texas: *community* property and *separate* property.

Separate property is:

1. property owned prior to marriage;
2. property acquired at any time by gift or inheritance;
3. recoveries for personal injuries sustained by a spouse during marriage (except for loss of earnings); and
4. property exchanged for above items 1 - 3.

Community property consists of the property, other than separate property, acquired by either spouse during marriage. This is true even if only one spouse has possession of the property. Just because one spouse is named on the title, deed, or account; one person receives the asset as payment for personal services (ie: salary); or the asset will not be paid until a future date (ie: retirement) do not make it separate property. There is a *presumption* that all property possessed by either spouse is community property. Separate property ownership must be proven by clear and convincing evidence. The most common way of proof is by tracing the asset from the date of acquisition to present date. If the asset is money, and has been deposited into a joint account, or into an account with monies which would be considered community property (ie: salary) has been deposited, the separate property may become commingled to the point that it is not possible or cost-effective to prove its continued existence.

In Texas, the appreciation or increase in value of separate property is generally considered separate property. However, reimbursement may be due to one spouse or the community for contributions made during the marriage to enhance the value of one spouse's separate estate. However, income or interest earned on separate property is community property. ***It is necessary to advise the court if you own separate property or if you believe you have a claim for reimbursement.*** Be sure to talk to your attorney about these issues early in your case.

The reimbursement area has been greatly expanded by the concept of **Economic Contribution**. Essentially where pre-2001 law gave all the appreciation in a estate's property to that estate, the concept of economic contribution allows the sharing of the increase in value attributable to the other estate's contribution to the property. It's a refined specie of reimbursement, but also shares in the appreciation of the property.

Ownership of one spouse's separate property cannot be awarded to the other spouse.

Community property is divided in a just and right manner. This does not necessarily mean equally. However, an equal division is a good rule of thumb. The value of all the property is to be determined as near as possible to the date your divorce. "Value" usually means the price at which the item could be sold currently on the open market. Insurance appraisals are at replacement value, which is usually higher. It is also necessary to determine current debts. Your lawyer may provide you with forms to assist you in providing this information. In most cases, your attorney will need to transcribe this information onto a formal Inventory and Appraisal which will be filed with the Court and exchanged with your spouse's attorney. It may be necessary to hire appraisers to value your home, business, or retirement plan.

You may also own property in a type of joint tenancy, which may or may not involve the right of survivorship. Be sure to tell your attorney if you believe you may own a bank account or other property as a joint tenant so that steps can be taken to revoke the survivorship provisions if possible.

MARITAL PROPERTY LIABILITIES

- If you have liability to a creditor, that liability will continue until the obligation is paid regardless of the terms of your divorce decree. Not all debts incurred during marriage are the responsibility of both spouses, but this is a highly technical and confusing area of the law. The decree may order your spouse to assume full responsibility for payment of certain debts. However, the decree is not binding against the creditor. They can sue you if your spouse does not pay. If you are found liable, your remedy is to sue your former spouse for failing to comply with the decree and obtain a money judgment against your former spouse. For more detailed information, see the article about [Marital Liabilities](#).

Since a great deal of property is exempt from execution under state law, and cannot be taken to satisfy the payment of a debt, you may not be able to actually collect the money judgment for many years, and will have to renew it every 10 years to keep it valid. Additionally, your former spouse may file for bankruptcy and attempt to extinguish the judgment. If there are funds available for payment of debts, you should consider utilizing these funds instead of continuing to be liable. If your spouse is going to keep the family home, you should encourage and cooperate with attempts to refinance so that you can be taken off the mortgage. This may not be applicable or practical in many cases, but you need to be aware that you remain liable to the mortgage lender in the event of default even if your spouse is assigned total responsibility.

There is a way to **transform separate property into community property**, and to **transform community property into separate property**, and such transformation does not have to be part of a divorce action. Ask your lawyer if either of these procedures are appropriate for you.