

What Happens after Termination of a Community Property Regime?

The legal regime of community property is terminated by the death of a spouse; judgment finding the marriage was in itself null; judgment of divorce; judgment of separation of property; or matrimonial agreement that terminates the community. After termination of the legal regime, spouses are separate in property and, generally, all wage income received belongs to the earning spouse exclusively. Generally, after the termination of a community property regime, a spouse may have a claim against the other spouse for reimbursement of one-half of the payments made on the community debts. Spouses whose marriage terminates in divorce may have the judge judicially partition the community assets and debts if they are unable to agree.

Myths and Misunderstandings

A few myths and misunderstandings about separate and community property are corrected as follows:

- ▶ How property is "titled," *i.e.*, husband or wife, does not affect classification as separate or community property. However, if a spouse declares in any financial document, act of sale, etc., that the property acquired is purchased with his/her separate property, and the other spouse acknowledges same, then the acknowledging spouse cannot set aside the transaction, or later transactions, based on the falsity of that declaration.
- ▶ Marriage alone does not automatically convert the existing separate property of the spouses into community property.
- ▶ Separate property brought into the marriage that loses its identity by commingling, replacement, etc., becomes community property.
- ▶ Upon termination of marriage, separate property funds utilized for the benefit of the community are reimbursed to that spouse in the amount of 50 percent, not 100 percent.
- ▶ Upon termination of the marriage, assets are valued at the time of the community property settlement or community property partition, not at the time of divorce.



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COMMUNITY PROPERTY

*What is Mine?
What is Yours?*

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Separate Property

A spouse's separate property, by definition, belongs exclusively to the spouse. All property acquired prior to marriage is, of course, separate. After marriage, a spouse's separate property also includes:

- ▶ Property acquired after marriage if there is a pre-nuptial separate property agreement.
- ▶ Property acquired during marriage after a post-nuptial separate property agreement is judicially approved.
- ▶ Property acquired by a spouse with separate money (things).
- ▶ Property acquired with mostly separate money (things) when the community money used can be classified as "inconsequential in comparison."
- ▶ Property acquired by inheritance or donation (gift) to a spouse individually.
- ▶ Damages from personal injury, workers' compensation, etc., awarded to one spouse only.
- ▶ Damages from a breach of contract against the other spouse or resulting from the fraud or bad faith of the other spouse in managing community property.
- ▶ Damages related to the management of his/her separate property.
- ▶ Any property acquired by a spouse as a result of a voluntary partition of the married couple's community property during the community property regime.
- ▶ All property acquired by a spouse after divorce or death of his/her spouse, including property from a community property settlement or community property partition, is separate property.

Community Property

An individual owns an undivided one-half interest in the community property with his/her spouse; neither spouse can sell, mortgage or lease his/her undivided interest in the community property until it is partitioned. Community property comprises the following:

- ▶ Property acquired during the marriage (unless spouses are separate in property) through the effort, skill or industry of either spouse.
- ▶ Property acquired with community property or with community and separate property when the value of the separate property is inconsequential to the value of the community property.
- ▶ Property donated to the spouses jointly.
- ▶ Fruits and revenues of community property, and fruits and revenues from separate property unless specifically reserved as separate property.
- ▶ Damages, loss or injury to a community property asset.
- ▶ All property acquired during the marriage not classified as separate property.

- ▶ All property in the possession of a spouse during the marriage is presumed to be community property, although either spouse may prove it to be separate property.

Marriage Contracts

Marriage contracts allow for the renunciation, termination or modification of the community property rules as follows:

- ▶ A marriage contract can maintain the spouses completely separate in property, or provide for separate and community property during the marriage. For example, the salary of one spouse can be classified as his/her separate property and the salary of the other spouse classified to be community property, or the spouses can provide for fixed contributions to the expenses of the marriage or apportion community property by shares.
- ▶ A marriage contract executed prior to the marriage does not require judicial approval.
- ▶ A marriage contract executed after the marriage (subject to exception below) requires judicial approval and must be by joint petition.
- ▶ During the first year after moving into and acquiring a domicile in Louisiana, spouses may enter into a marriage contract without judicial approval.
- ▶ Limitations on marriage contracts include fraud of creditors, renunciation/alienation of marital portion and the right of one spouse to obligate the community.

Community vs. Separate Property

How to change community property into separate property, and vice versa:

- ▶ Donation by a spouse to the other spouse of his/her interest in a community asset converts the entire ownership of the asset into the separate property of the recipient spouse.
- ▶ Donation by a spouse of his/her separate property to the community transfers that property into community property.
- ▶ Voluntary partition of community property during marriage converts the property partitioned from community to separate property of the recipient spouse.

Equal Management of Community Property

Louisiana's principle of equal management of community property is as follows:

- ▶ Each spouse has the right of equal management of community property (subject to certain exceptions) and a spouse acting alone may manage, control and dispose of community property.

- ▶ Both spouses must concur in the sale, mortgage or lease of community real estate, furniture or furnishings in the family home, all or substantially all of the assets of the community, and motor vehicles titled in the names of both spouses.
- ▶ The donation of community property to a third person requires the concurrence of both spouses. One spouse may, however, make a usual or customary gift of a value commensurate with economic positions of the spouses at the time of the donation.
- ▶ A spouse has exclusive right to manage, sell, mortgage or lease community movables registered or titled in that spouse's name alone, such as shares of stock and motor vehicles.
- ▶ A spouse may, in writing, renounce the right to participate in the management of community property (in whole or part) and/or the spouse's right to concur in the sale, mortgage or lease of community real estate.

Debts During Marriage

Concerning debts of the spouses incurred during the marriage, who is liable for what?

- ▶ If spouses are separate in property, the spouse incurring the debt is liable, and the non-incurring spouse is only liable for the benefit received from the debt.
- ▶ With a community property regime, a debt incurred by a spouse is either a community debt or a separate debt. If incurred for the common interest of the spouses or for the interest of the other spouse, it is a community debt.
- ▶ A separate debt of a spouse can be satisfied from that spouse's separate property and the community property.
- ▶ A community debt can be satisfied from the community property and from the separate property of the spouse who incurred the same. If both spouses received a benefit from the debt, it can be collected from the separate property of both spouses as well as the community property.
- ▶ If separate property is used to satisfy a community debt or vice versa, the spouse owning the separate property, or the community if vice versa, may be entitled to reimbursement.