

Community and Separate Property in your California Divorce

We briefly covered the basics of [community and separate property](#) in a previous article. Today, we'll go into further detail and discuss a few scenarios we've experienced while assisting others with their divorce. By the end, you should have a better idea of this subject, and if not, we're only a phone call away!

Community Property

Community property, as viewed by California Family Law, is a very broad term. The shortened definition includes, "...all property, real or personal, wherever situated, acquired by a married person during the marriage while domiciled in this state is community property." There are other aspects that expand and limit whether real property (residential or commercial real estate or land) or personal property (anything not considered real property) is community or not, dependent upon the facts specific to the case. As a general rule, community property is divided in half.

Separate Property

Separate property, on the other hand, includes all of the following:

- All property owned by the person before marriage,
- All property acquired by the person after marriage by gift, bequest, devise, or descent,
- The rents, issues, and profits of that property, and
- The earnings and accumulations of a spouse and the minor children living with, or in the custody of, the spouse, while living separate and apart from the other spouse.

As with community property, the rules for what comprises separate property are not always apparent. It's possible for community property to contain a separate property component to it (and visa versa). Community property can transform into separate property through a process called transmutation if both spouses agree and comply with legal requirements. Like many rules in divorce cases and family law, there are exceptions. That's where an experienced family law attorney comes in.

Let's discuss scenarios we've come across during the split of assets in divorce cases:

Title to a home is only in one spouse's name

This happens all the time when property is purchased during the marriage but undergoes a refinance (for example) and one spouse is removed from title because of a bank or loan stipulation. This can also occur due to mutual agreements between spouses during the marriage. So, the follow up question always comes back to the spouse who isn't listed on the title. There

isn't one answer because there are always exceptions and contingencies involved.

One perspective involves reading the title as is – whoever owns the title is the owner of the property, and this can only be rebutted with clear proof. The opposite perspective looks at the removal of one spouse's name from the title as being performed without their knowledge or under dispute. In that scenario, the title owner has to prove that division should only be based on the title owner's name.

Merging of community and separate property money

Another very common scenario is the merging or “commingling” of community money with separate property money during the marriage. This usually results in a dispute between the couple with the money division between them at the time they separate. An example: One spouse has money in a bank account prior to the marriage, and during the marriage, adds the other spouse's name on the account, deposits community earnings into that account, and pays community debts with money from the account. At this point, it's likely that a forensic accountant will be brought in to review the history of transactions in each account during the marriage to conclude if the community and separate property portions can be tracked back in time, and if it can be determined how much of the money left over is labeled as community or separate property.

One spouse sells a home that was owned before getting married, and put that money into the home that is currently owned with the soon to be ex-spouse. Is that money considered separate?

As with the scenario above, if the funds can be traced, then there shouldn't be an issue getting them back as part of the divorce process. This is generally done by obtaining the records related to the sale of the previous home and trailing the money from the sale to a bank account (unless it was placed directly from one escrow to the new home purchase). Then, from either the bank or escrow account, it can then be trailed to the new home purchase. This ultimately proves its origin and supports your cause. Your family law attorney can guide you with these steps.

Leading up to the divorce, one spouse goes on binge shopping trips resulting in thousands owed on community credit cards

Unless the shopping binges were used to pay for community property related expenses, you should be OK. If they purchased personal items such as clothing, shoes and purses, a detailed examination of the expenses would need to be performed. Assuming they ran up the credit cards and increased your joint debt right before separation (without community purpose), then the spouse could be held 100% liable for those purchases. If you can track down the billing statement that contains those charges, it would be extremely helpful in your case.

You may wonder where it ends. With all the intricacies involved in community vs. separate property issues, an experienced family law attorney on your side is a huge benefit. It doesn't matter which side you are on; our family law attorneys have vast knowledge and experience with cases that involve dividing real, personal, community and separate property. [Give us a call or send an email](#) for a free phone consultation.