

## Community Property vs. Separate Property

If you're contemplating or in the middle of a California divorce, it's extremely important for you to become familiar with some very basic legal vocabulary, which includes the terms "separate property" and "community property." Since California is one of the nine "community property" states, knowing how property is divided under these laws is important to protect your rights and make smart decisions in your case.

### What is California Community Property?

In a nutshell, anything acquired during marriage is presumed to be community property and therefore equally divided between spouses. Family Code Section 760 defines community property as "all property, real or personal . . . acquired by a married person during the marriage." This includes but is not limited to retirement accounts, timeshares, the pots and pans, bank accounts, vehicles, business interests, stocks, and life insurance policies.

### What is California Separate Property?

Anything acquired prior to marriage or after the date of separation is presumed to be the acquiring spouse's separate property. Additionally, pursuant to Family Code Section 770, separate property also includes all property acquired by gift, bequest, devise, or descent. The date of separation is therefore essential for determining property interests.

### How do I Decide the Date of Separation?

The date of separation is the date that at least one spouse *subjectively* decides that the marriage and demonstrates *objective* behavior. In fancier terms, the date of separation occurs when one person does not intend to resume the marriage *and* his or her actions bespeak the finality of the marital relationship. There is no one magic test for determining the date of separation, and each case is different.

In the event that you and your spouse cannot agree on the date of separation, that issue will likely be "bifurcated" (separated), and the judge will determine the correct date after a trial.

### Dividing the Property: the Basics

One of the basic principles of community property law is that both spouses are treated as equal co-owners of property acquiring during the marriage. Upon a divorce, the law requires that the net value of the community assets received by each person to be equally split.

Spouses can divide their property "in kind," meaning that each asset is equally divided. In most

cases though, it makes more sense to instead look at all of the assets as a whole and equally divide the net value. For example, one spouse may keep the house and the other get all of the retirement accounts.

For more information on making smart property division choices, please [contact us](#) for help. Property division is one of the more difficult issues in divorce, and the impact the date of separation has on divorce cannot be understated.