

10. Community Property

If you are married and living in Washington State, you are subject to Washington's community property laws. The character of property as community or separate depends on when and how the property was *acquired*. How the property is registered or titled makes little difference.

Community and Separate Property

As a general rule, all property acquired by either spouse during marriage is community property. As community property, the property is owned by both spouses equally.

Separate property that is:

- owned before marriage;
- received during marriage as a gift or inheritance; or
- generated by separate property (e.g., rent received from a separate property rental house).

As separate property, it belongs solely to the spouse who either owned or received the property.

What If Both Community and Separate Funds Are Used to Acquire Property?

When dealing with property that is purchased over time (e.g., property purchased on an installment contract), special rules apply to determine the property's character. The character of property purchased under an installment contract will usually be determined by the character of the down payment (if any) and the character of the credit pledged. As an example, if a husband and wife purchase a \$10,000 automobile by paying \$2,000 down from an inheritance by the wife (which is her separate property), and the husband and wife pledge their community credit for the balance (both sign for the loan), the car will be 20% the wife's separate property (2/10) and 80% community property (8/10). Because of the community credit used to acquire the car, the character of the funds *actually used* to pay the property (after the initial down payment) makes no difference.

In our example, the car will remain 20% the wife's separate property and 80% community property even if the husband uses property he owned before marriage (his separate property) to pay off the remaining \$8,000 balance on the car. However, he will be entitled to reimbursement for those payments.

-46-

The only major exception to these rules is life insurance. As a general rule, proceeds payable under a life insurance policy will have the same character as the premiums actually paid on the policy. For example, if half of the premiums are paid with community funds after marriage, the policy proceeds will be one-half separate, and one-half community. However, term insurance takes the character of the premiums paid for the most recent coverage period (because there is no benefit to term insurance other than pure protection which must be paid for as each premium comes due or the policy lapses).

Can You Change the Character to Separate and Community Property?

The character of property as separate or community property can be changed—either intentionally or unintentionally.

Intentional Changes. By entering into a written agreement, a husband and wife can change the character of their property. The most common agreement is the “community property agreement.” In a nutshell, a community property agreement can change separate property into community property (including property that is acquired later—e.g., by inheritance), and can cause the community property to pass immediately to the surviving spouse at the time of death, without need for probate.

A husband and wife can also agree to change community property into separate property. This is done with a written “separate property agreement” or “status of property agreement.” The agreement will identify the property to be characterized as one spouse's separate property. For example, the spouses might agree that all funds in a

specified bank account shall be characterized as the wife's separate property regardless of the source of the deposits to the account.

Community property agreements must be in writing and must be signed by both spouses, with their signatures acknowledged before a notary public. It is recommended that separate property agreements also be in writing and be signed and acknowledged.

Another type of separate property agreement is the antenuptial or premarital agreement, which is signed before the marriage takes place. The parties may agree that property that would otherwise be community property will be one spouse's separate property. They can also identify existing separate property and provide that it will remain separate property throughout the marriage. These agreements must be written and signed by the parties. Courts have imposed certain other requirements on antenuptial agreements as well (i.e., either the agreement must be substantially fair to the party not seeking its enforcement, or the agreement must be found procedurally fair in that (1) both parties fully disclosed their assets and liabilities to each other and (2) both parties were represented by independent counsel), so it is best to consult your attorney to ensure that the agreement is properly prepared.

-47-

Unintentional Changes. The character of separate property can change if it is commingled with community property. This most commonly occurs when separate funds are deposited in a bank account that holds community funds. With only limited exceptions, once the funds are commingled, the entire account will be treated as community property. For this reason it is important that all separate assets be kept segregated if their separate character is to be preserved.

Management and Disposition of Community and Separate Property

Generally, both husband and wife have equal rights to control and manage the community property. Although this typically allows either one acting alone to buy, sell and deal with the community property, the following transactions do require both spouses to act together:

- Selling, buying, or encumbering community real property
- Selling or encumbering household furnishings or appliances

- Selling, buying, or encumbering assets of a jointly managed community business
- Making a gift of community property

Unlike community property, separate property belongs only to the spouse who owns it. As a result, only that spouse has the right to manage, buy, sell, encumber, or otherwise transfer his or her separate property.

When a Spouse Dies

On death, each spouse can dispose of one-half of the community property by Will or Will substitute, such as a living trust. *The surviving spouse need not receive the deceased spouse's share.* Of course, each spouse also has the power to dispose of all of his or her separate property. If the deceased spouse has no Will, his or her half of the community property will pass to the surviving spouse under the laws of intestacy. The deceased spouse's separate property, however, may pass in part to relatives other than the surviving spouse unless there is a Will that provides for a different plan.

How Do Community Property Laws Affect Creditors?

Generally, a creditor will only be able to reach property that has the same character as the debt owed by the spouse. Any debt incurred by a spouse before marriage is that spouse's separate obligation. This means that those creditors will normally only

be able reach that spouse's separate property, and not community property following the marriage. The most notable exceptions to this rule are the following:

- Alimony and child support payments, which are enforceable against the debtor spouse's wages (community property) during the second marriage
- Debts that are reduced to judgment within three years of marriage and are enforceable against the "earning and accumulations" of the debtor spouse

The community property laws of Washington are the results of a public policy in this state to have both a husband and wife share equally in the fruits of either spouse's labors. As a result, those laws affect virtually every aspect of a husband's wife's property during marriage.

This article covers a broad overview of the general rules of community property, but there are many exceptions to those rules that must be considered before decisions are made that may affect your rights. If you have specific questions regarding your property, you should consult with your professional legal advisors.

Quasi-Community Property

If during marriage you have moved to Washington from another state or country that does not have community property, your Will or living trust could be affected by Washington's quasi-community property law. Quasi-community property is separate property of a deceased spouse that would have been community property if it had been acquired by the spouse while living in Washington. It may be advisable to execute waivers of quasi-community property agreement. The quasi-community property law has many exceptions and special rules. You should consult your attorney about the impact of quasi-community property upon your estate plan.