

What Happens after Termination of a Community Property Regime?

The legal regime of community property is terminated by the death or judgment of declaration of 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 the 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 marriage, assets are valued at the time of the community property settlement or community property partition, not at the time of divorce.

This brochure, prepared by the Public Information Committee of the Louisiana State Bar Association, is issued to inform and provide general information, not to advise. If you have a specific legal problem, you should not try to apply or interpret the law without the aid of an attorney who knows the facts because the facts may change the application of the law.

Courtesy LSBA

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 prenuptial 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 due to personal injuries sustained during the community; however, damages attributable to expenses incurred by the community as a result of the injury or in compensation for lost community earnings are community property.
- ▶ 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

Community property is made up of property acquired during the existence of the marriage through the effort or skill of either spouse, property acquired with community things or community and separate things, and this classification is fixed at the time of the things is acquired. An individual owns an undivided one-half interest in the community property with his/her spouse and 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 at the time the property was acquired.
- ▶ 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.

Matrimonial Agreements

Matrimonial agreements (i.e. pre-nuptial agreements) allow for the renunciation, termination or modification of the community property rules as follows:

- ▶ A matrimonial agreement 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 matrimonial agreement executed prior to the marriage does not require judicial approval.
- ▶ A matrimonial agreement 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 matrimonial agreement without judicial approval.
- ▶ A matrimonial agreement is effective towards third parties as to real estate when filed for registry in the conveyance records of the parish where the property is situated, and as to movables when filed for registry in the parish where the spouses are domiciled.
- ▶ A minor cannot enter into a matrimonial agreement without written consent of his mother and father, or the parent with legal custody, or their tutor, unless they are fully emancipated.

How to Change the Classification of Property

There are several ways 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.

Both Spouses Can Control Community Property

Both spouses can control community property (i.e. "equal management of community property,") subject to the following:

- ▶ Each spouse acting alone may manage, control or dispose of community property unless otherwise provided by law.
- ▶ 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 a community enterprise, and motor vehicles titled in the names of both spouses jointly.
- ▶ 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.
- ▶ The spouse that is the sole manager of a community enterprise (i.e. business) has the exclusive right to sell, mortgage, or lease its movables unless they are issued in the name of the other spouse or concurrence is required by law.
- ▶ A spouse may, in writing, expressly 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
- ▶ A spouse is liable for any loss or damage caused by fraud or bad faith in the management of the community property.

Debts During Marriage

Who is liable for debts of the spouses incurred during the marriage?

- ▶ 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.
- ▶ A debt incurred before the date of a judgment of divorce for attorneys' fees and costs in an action for divorce is a community debt.
- ▶ A debt resulting from an intentional wrong or one incurred for the separate property of the spouse is a separate obligation to the extent that it does not benefit both spouses, the family, or the other spouse.