

Houston Property Division

IS IT COMMUNITY PROPERTY or SEPARATE PROPERTY – MINE OR OURS?

The “short” answer is as follows:

- It’s presumed community (both of yours) unless you can prove it’s separate;
- If you bought it before the date of marriage, it’s separate;
- If it was gifted to you or you inherited it, it’s separate;
- All income from whatever source (even separate property) becomes part of the community.

Be aware that, upon dissolution of a marriage, Texas law presumes that everything owned by the parties belongs to the community. Therefore, all property, upon dissolution of the marriage, is subject to division with each party being awarded a “just and right” share. Courts typically award each party 50% share when there are no fault grounds for the divorce. The community property presumption may be overcome by clear and convincing evidence. A self-generated spreadsheet showing a timeline, while helpful, remains insufficient proof. In a court of law, with respect to characterization of property, saying it is separate will not make it so.

Sometimes a great deal of money is paid to forensic accountants to trace a series of transactions to confirm the separate property nature of assets. This can become very complicated. Here are some basic guidelines:

- Texas follows the “Inception of Title Rule”. The rule provides that property belongs to a party upon the date that the party obtains ownership rights to that property. If this occurs prior to the marriage – the property is separate property.
- A refinance may change the character of the property if your spouse is added to documents and the deed.
- Begin as soon as possible to gather bank statements as of the date of marriage and a current date. Don’t assume your spouse will admit that property, an account, money or whatever belongs to you alone.
- Please remember that once your spouse talks to an attorney, he or she may develop a “memory loss” about any circumstances surrounding an inheritance or a gift and anything purchased with inherited or gifted funds.
- The person who needs to establish that an asset is “separate” has the burden of proof by “clear and convincing evidence.” If there is doubt, the benefit of the doubt will be given to the community.
- Always do a “cost benefit analysis.” Is it worth taking the time and spending the money to prove the asset is “yours alone” — or would it be cheaper to just “split it” and move on?

There are never guarantees, and no reputable lawyer will make them. Experience matters. Remember -- don't count on your spouse to be as reasonable even though you might be. A fight may be inevitable, but you are served best by remaining calm and clear-headed.