

Community Property

What is community property? Under Texas law, all of the property and earnings of both spouses acquired during the marriage is considered to be *community property* (*property owned together by the spouses*). It makes no difference whose income paid for it or whose name is on the title, contract, account or note, as long as it was purchased between the date of marriage and the date of the divorce and was not a gift, inheritance, or personal injury settlement. Examples of *community property* include:

- Income from employment, including all wages, salaries, tips and overtime;
- A house or other real estate purchased during the marriage;
- Vehicles purchased during marriage (regardless of which spouses name is on title);
- Individual contributions to pension, 401K or other retirement accounts made from the date of marriage;
- Unemployment compensation and payment for lost wages;
- Balance of checking and savings accounts, regardless of whether the account is single or joint.

What is separate property? Everything acquired during a marriage is community property unless a spouse can prove (or the spouses agree) that it is separate property. *Separate property* is property owned before marriage, or acquired during the marriage as a gift, through inheritance, or as part of a personal injury settlement. Examples of *separate property* include:

- A spouse's house purchased before the marriage;
- A car given to a spouse by his parents;
- Jewelry given to a spouse by the other spouse;
- Retirement contributions made to a spouse's retirement account before the marriage;
- Spouse's inheritance;
- A spouse's personal injury settlement resulting from an auto accident in which he was injured.

Reimbursement: A house or car purchased before the marriage is separate property. But if mortgage payments or car payments on separate property were made with community funds after the marriage, the non-owning spouse can ask for reimbursement of money spent to pay for the other spouse's separate property.

How will the court divide our property? The court is *not* required to divide marital property equally. The court is only required to make a "just and right" division, considering the needs of the children, education and earning capacity of the spouses, fault in the breakup of the marriage (if stated in the divorce petition), who has custody of the children, and any other factor that the court thinks is relevant. If the spouses agree to a division of property and debt, the court will usually approve the agreement as "just and right." The spouse who is awarded the property is typically responsible for the debt that goes with it (for example, a car payment, or mortgage).

How will the court divide our debts? Marital debt is debt that is created or liabilities that are incurred during the marriage. It can include the balance of a car note, a mortgage, credit cards, personal loans, student loans, medical debts and other liabilities. The court is *not* required to divide debt equally upon divorce. It is required only to make a "just and right division" depending on the circumstances of the parties. Both spouses are responsible for the debts and liabilities of the marriage, *regardless of which spouse created it or the name that is on the title or note*. A car purchased on credit during the marriage is community property. A divorce court can award the car (and balance owed) to one spouse, but does not have the power to remove the other spouse's name from the contract that created the debt. The creditor can still look to the other spouse for payment. The same holds true for credit card agreements, mortgage contracts and other debts. If your spouse opened an account using your information without your knowledge or consent, it may be considered fraud or identity theft. Check your accounts and credit status by going to www.annualcreditreport.com for your *free* annual credit report.