

SUMMARY OF MARITAL PROPERTY LAW IN TEXAS

When evaluating suggested options for resolution of your case, it is important for you to have a basic understanding of Texas law. It is equally important for you to remember that such laws need not dictate what is an acceptable outcome for both parties and any children under the circumstances.

This document is designed to assist you in preparing a Joint Inventory & Appraisal (I&A) in your Collaborative Law case. This is by no means a comprehensive statement of Texas law, but merely an overview. If you have any questions regarding Texas law, please address them directly with your lawyer.

1. **Joint Inventory and Appraisal**

In Collaborative Law, because formal discovery procedures are infrequently utilized, it is important for the parties to complete an I&A. The I&A will likely be the only sworn document the spouses will prepare disclosing the nature and extent of their marital estates. Thus, unless both parties waive the preparation of an I&A, or agree that individual inventories are to be prepared, the parties cooperate together to prepare a joint I&A. To the extent possible, they agree upon the characterization and valuation of their assets and liabilities, and if they differ, one option is for them to engage a neutral expert to assist them.

2. **Community Property**

All property owned at the time of divorce is presumed to be community property. Generally, assets acquired on credit during the marriage are community property.

3. **Separate Property**

Definition: Separate property is what you owned when you married (what you had or earned before you married); anything you have inherited at any time; anything you have received as a gift even from your spouse (if you both received an item as a gift, you each own a 50% undivided separate property interest in the item); and certain personal injury recoveries (such as damages for pain and suffering, but not pertaining to medical expenses or lost wages). New proportional allocation rules may be used to characterize separate property interests in stock option and restricted stock plans.

Mutations. If an asset is separate and it changes form (mutation), such as when you use separate cash to purchase a car, the car is separate, so long as you can trace your separate money or property into the new car.

Mixed Character. If you used some of your separate funds and some of your community funds to purchase an asset, it could be of mixed character (such as

30% separate and 70% community, depending on how much came from each estate).

Income from Separate Property. Income from separate property (such as interest and dividends) is community property and what it purchases is then community property. There are exceptions, such as oil royalties.

Tracing. There are established rules of tracing to determine the character of property acquired with funds from accounts in which both separate and community funds have been deposited. Further, the separate property interest of a spouse in a defined contribution retirement plan may be traced using these tracing and characterization principles.

4. Marital Agreements

Premarital (prenuptial) agreements and marital (post-nuptial) partition agreements can change these general property rules. For instance, personal earnings during the marriage can be made the separate property of the earning party, upon agreement of the spouses.

5. Economic Contribution/Reimbursement

Claims for economic contribution or equitable reimbursement can arise when one marital estate makes payments for the benefit of another marital estate. Examples are:

- Funds of one marital estate used to increase the value of another marital estate;
- Funds used to pay the liabilities of another marital estate. For example: community funds paid (a) a tax liability owed before marriage; (b) more than a nominal amount of a premarital obligation owed to a bank or credit card company; (c) a mortgage on separate real property;
- A community investment in a separate property corporation; and
- Improvement of a separate property residence with community funds.

These claims can be made by the community property estate against a party's separate property estate, or by a party's separate property estate against the community property estate and/or the other party's separate property estate.

A marital estate is not entitled to reimbursement for:

- Payment of reasonable living expenses for a spouse or child, such as for food, clothing, shelter, entertainment, medical expenses, etc.
- Payment of a spouse's student loans.

6. Gifts

There are special rules to help determine whether a gift was intended. The key element is the donor's intent.

7. Commingling

When assets are mixed or combined and they cannot be traced, they are presumed to be community.

8. Goodwill, Degrees and Professional Licenses

Professional or personal goodwill, degrees and professional licenses, are not considered property under Texas law, and are not divisible.

9. UTMA

Uniform Transfer to Minor Act accounts belong to the children, not the parents, and do not belong to the marital estates.

10. Property Division

Texas law does not require a 50/50 division of the community estate, but rather a just and right division that has due regard for the rights of the parties and their children.

11. Tax Consequences of Divorce

The Internal Revenue Code sets forth rules which allow parties to structure their division of property on divorce as a non-taxable transaction. The federal income tax consequences of divorce can be complicated, and since most collaborative lawyers and neutral financial professionals do not give tax advice, you should have your property and tax agreements reviewed by your CPA or other tax advisor. Further, tax consequences of specific assets in the division of the marital estate may be considered.