

## Overview:

Texas is one of only a few community property jurisdictions in the U.S. Under the Texas community property system, all real and personal property of married persons is categorized as either "community property" or "separate property." Generally speaking, community property is owned by the "community estate," with both spouses owning an undivided and equal interest in the property. By contrast, separate property is owned by only one spouse.

## Definitions:

- Separate Property: TEXAS FAMILY CODE § 3.001 states that separate property consists of:
  1. the property owned or claimed by the spouse before marriage;
  2. the property acquired by the spouse during marriage by gift, devise, or descent; and
  3. the recovery for personal injuries sustained by the spouse during marriage, except any recovery for loss of earning capacity during marriage.
- Community Property: TEXAS FAMILY CODE § 3.002 simply defines community property as "the property, other than separate property, acquired by either spouse during marriage."

## Special Considerations:

The characterization of property as separate or community is determined at the time the right to own or claim the property arises. This is known as the "inception of title" rule.

The income from separate property is community property (*ex. income from renting out separate property real estate*). However, the increase in value of a separate property asset remains separate property.

The character of particular property as separate or community is preserved even when property mutates form (*ex. from real property to cash*).

By law, courts presume that all property owned by a spouse during or upon dissolution of marriage is community property unless proved to be separate property by clear and convincing evidence.

*Disclaimer: This document is intended to be a general overview of the basic tenets of the Texas community property system. There are many circumstances that may complicate or change the characterization of property, including that spouses may convert separate property to community property and vice versa by certain specific language in written agreements. You should seek the advice of an attorney regarding the factors and circumstances affecting the characterization of your specific property.*