



PREVENTIVE LAW SERIES
**CALIFORNIA
COMMUNITY PROPERTY**



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WHAT IS COMMUNITY PROPERTY?

Community property is a legal method of characterizing personal rights in property acquired DURING A MARRIAGE. California is a community property state. The community rules discussed in this handout are specific to California and may be different for other community property jurisdictions.

Community property is defined as all property, other than separate property, gifts, and inheritance, acquired by either spouse during marriage. Separate property is all property owned by either spouse before marriage; acquired during marriage by gift, will, or devise; or acquired during marriage by use of separate funds. Community property is equally owned by each spouse. Courts generally presume that all property acquired during marriage and all property on hand at divorce or death is community property. California also has "quasi-community property." This refers to all property acquired while domiciled in a non-community property state that would have been community property if acquired in California. This means that if you file for divorce in California, but never lived in a community property state, all marital property will be treated as community property.

When parties file for divorce or a legal separation in California, the courts use community property rules to divide the property of the marriage. Courts start with a presumption that each asset will be divided 50/50. This rule applies for both community assets and community debts. A court will divide assets that it concludes are community property. This includes bank accounts, automobiles, stocks, and pensions. If a husband or wife disagree that an asset is community property or that a debt is a community debt the person who disagrees will have to produce evidence to persuade the court that the asset or debt does not belong to the community. If the parties fail to agree to a voluntary division of property by the court, the matter may be submitted to arbitration.

Community property rules can substantially affect your ability to dispose of property without your spouse's consent. For every dollar earned during marriage, each spouse owns half and may be able to dispose of the income without the other's consent. Each spouse is also responsible for any debt created during the marriage by either spouse, except in very limited circumstances. Know that even if your spouse is running up debt in their name alone, you may also be held accountable for it. The time period in which the debt was incurred is more important than the title to the account under which the debt was created. Failure of one spouse to pay taxes or have proper withholding from pay before or during the marriage can result in the I.R.S. or the California Franchise Tax Board garnishing the other spouse's wages and accounts at financial institutions.

You and your spouse have broad freedom of contract which means that you and your spouse have a lot of freedom to determine for yourselves how to divide your property. When the parties cannot agree on a disposition of their community estate, trial courts have broad discretion to determine the manner of division in order to accomplish a net equi division.

LEGAL ASSISTANCE SERVICES

A legal assistance attorney is available by appointment Monday through Thursday from 0800 - 1030 and 1300 - 1500, and Friday from 0900 - 1100. Powers of attorney and notaries are available Monday through Friday at the same times. For more information, please contact the Legal Assistance Office, located in Building 56, 32nd Street Naval Station, San Diego, CA, by telephone at (619) 556-2211, or our office at Naval Air Station North Island – Coronado, Building 318 – 2nd Deck, above the Fleet and Family Support Center, Saufley Road, by telephone at (619) 545-6437.

RESOURCES California Family Code §§ 1 et seq., 700 et seq., 2500 et seq. (2013)