

Dividing Marital Assets in a Divorce

The Guide to
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By Trey Yates

There are many myths surrounding divorce law in Texas. One myth is that all marital assets will be divided 50/50 in a divorce. This is not the law. In a divorce, the court will order a “just and right” division of the couple’s community property. This means that neither party is automatically entitled to an even split of the community estate, nor is a court ever allowed to award one spouse’s separate property to the other spouse.

Let’s take a closer look at the two major categories of marital property in the State of Texas: Community Property and Separate Property.

Separate Property consists of property owned or claimed by a spouse before marriage; property acquired by a spouse during marriage by gift, devise, or descent; and recovery for personal injuries sustained by a spouse during marriage, except any recovery for loss of earning capacity during marriage.

Community Property consists of the property, other than separate property, acquired by either spouse during marriage. This is true regardless of which spouse has possession of the property. The fact that one spouse is named on the title, deed, or account, or that one spouse receives the asset as payment for personal services (e.g. salary), or the asset will not be paid until a later date (e.g. retirement benefits), will not change the character of the property.

Presumption of Community Property

In Texas, there is a legal presumption that property possessed by either spouse during or on dissolution of marriage is presumed to be community property. This legal presumption can only be overcome by “clear and convincing evidence” that the property in question is indeed separate property. The most common way of proving separate property is by tracing the asset from the date of acquisition to the present date.

Right to Reimbursement

The increase in value of a spouse’s separate property during marriage is generally considered separate property. However, a spouse may have a claim for reimbursement when the community estate in some way improves the separate estate of one of the spouses, or vice versa.