CALIFORNIA
FAMILY
LAW

PROPERTY & DEBT IN A DIVORCE OR LEGAL SEPARATION

Prepared by Jennifer E. Drury, Attorney at Law and Susanna V. Pullen, Attorney at Law and Certified Family Law Specialist

www.drurypullenlaw.com

TABLE OF CONTENTS

Author: Bennett Reichard

Research credit: Bennett Reichard and Cassidy Drury-Pullen
Formatting: Elisabeth Brymer

PROPERTY & DEBT

OVERVIEW

Property is anything that can be bought or sold, such as:

- A house,
- Cars,
- Furniture, or
- Clothing

Property also takes the form of anything with substantial value, such as:

- Bank accounts and cash,
- Security deposits on apartments,
- Pension plans,
- 401(k) plans,
- Stocks,
- Life insurance that has cash value,
- A business, or
- A patent

UNDERSTANDING PROPERTY & DEBT

OVERVIEW

When getting divorced or legally separated, the court will make decisions about how to divide the property that both spouses or domestic partners brought during the relationship.

Although a judge can resolve disputes about property divisions, oftentimes couples are able to divide property and debt by agreement. It is important to note that a judge still must sign off on an agreement following a divorce or legal separation. Until that occurs, all property accumulated during the marriage or domestic partnership remains under joint ownership, no matter who is using it or has control of it.

The same is true of debts, if you divide them between spouses or partners without a court order or judge signing off on it, the debt will continue to belong to both parties, even if it is divided informally.

COMMUNITY PROPERTY

PART ONE

California is a community property state meaning that a marriage or domestic partnership makes two people one legal community.

In general, community property is anything that both spouses or domestic partners own together. This includes everything that was purchased or received while married or in a domestic partnership, including debt, that was not a gift or inheritance.

Additionally, community property includes all earnings that either spouse or partner earned during the marriage or domestic partnership. You can usually determine if property belongs to the community by looking at the source of money used to purchase it. If the purchase money was earned during the marriage, that property is then legally defined as "community property".

- An example of this is a car bought with money saved from multiple paychecks. If the earnings were generated during the marriage or domestic partnership, then regardless of who paid for it, the car belongs to both parties.

COMMUNITY PROPERTY

PART TWO

Additionally, all debts accumulated during the marriage or domestic partnership are community property as well. Even if only one party incurred these financial obligations.

In California, each spouse or partner owns one-half of the community property. Furthermore, each party is responsible for one-half of the debt. In general, community property and debts are divided equally. Some people don’t realize the extent of community property and debts they are entitled to.

- For example, you have the right to part of the money from a spouse or partner’s pension plan even if you previously had no knowledge of it. Additionally, if your partner or spouse has accumulated large amounts of credit card debt for example, that debt belongs to you regardless of your knowledge of it.

QUASI-COMMUNITY PROPERTY

Quasi-Community Property is any property, acquired by one or both spouses or partners when living in another state, that would have been community property had it been acquired in California.

- For example, if you and your spouse or partner were living in New Jersey during a portion of the marriage or partnership, and you both worked there and purchased a car there. If you then moved to California and entered a divorce or legal separation, that car will be treated as community property because had it been acquired in California it would have been community property.

SEPARATE PROPERTY

Separate property is as anything you have that you owned before you were married or registered in a domestic partnership. Additionally, inheritances and gifts to one spouse or domestic partner at any time are also separate property. Further, any rents, profits or other money earned from your separate property is also separate property. Finally, any property purchased with separate property is separate property itself as well.

- For example, if you receive an inheritance from a recently deceased relative and decide to purchase a car with that money, the car is now separate property regardless of when you buy it. Even if you are married or in a domestic partnership when the car is purchased, it is still separate property because the source of money to buy it was separate property.

Separate property is also anything acquired after the legal date of separation. If you accumulate property after a divorce or legal separation is executed, that property is separate, as well as any debts accumulated thereafter as well.

MIXED COMMUNITY & SEPARATE PROPERTY - COMMINGLING

Sometimes there are things that are part separate property and part community property. This situation is referred to as "commingling" and arises when separate and community property are mixed together.

A common commingling situation is when a spouse or partner owned a house before the marriage or partnership, but sold it and used the money as a down payment on a new house after getting married or registering a domestic partnership. The down payment would be considered separate property because the funds came from selling a house that was separate property. If the mortgage payments though are made using earnings from during the marriage or partnership, the equity gained from paying down the loan becomes community property. Overall, the resulting equity in the house is referred to as commingled.