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Yours, Mine or Ours?

If you are married and can thank your lucky stars you live in Texas, you can also be grateful that you live in a Community Property state. Texas is only one of nine states that offer this status to married couples. While most of us have heard the term, many do not fully understand this concept and the differences between community property and separate property.

One major difference is ownership. Each spouse owns an undivided 50 percent of all community property; whereas, separate property is owned by one spouse or the other. Additionally, one may transfer or sell separate property alone, but both spouses need to consent to transfer or sell community property.

Conceptually, Texas laws presume that all property owned by a husband and wife is community property. There are five exceptions: 1: property that spouses bring into the marriage remains such spouse's separate property; 2: if the spouses move from a separate property state to Texas, then property will be owned in the same manner as in the other state; 3: property a spouse receives as a gift is that spouse's separate property; 4: property that a spouse inherits is that spouse's separate property; and 5: property can be partitioned to be treated as either the separate property of the husband or wife. If property does not fall into one of these exceptions, the property is treated as community property.

One common misconception occurs when only one spouse's name appears on a financial account. This alone does not create separate property. Instead, you must look at the source of the funds to make this determination. For instance, if a spouse's salary is in this account, it is community property, or if a spouse's inheritance is in the account, it is separate property.

It is also important to understand that income earned on separate property (i.e. interest, dividends, rents, royalties, etc.) is community property. For instance, if you inherit a brokerage account, you should not reinvest dividends and interest back into that account as you would then be commingling community property (the dividends and interest) with separate property (your inheritance). Commingling these different properties for many years will make it difficult to separate them in later years. And remember the presumption favors community property.

To a happily married couple, the concepts and maintenance may seem irrelevant. But to a divorcing couple, "yours, mine or our" property is anything but irrelevant. If you have questions or concerns, you should seek the advice of a professional advisor who is educated and experienced in this area.

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