

Texas Community Property Law

NOTE: *The following is only a brief summary of the law in layman's terms and is not meant to be legal advice. You should consult an attorney with any specific questions or concerns.*

Throughout the United States, one comes in contact with a variety of different types of marital property ownership. In Texas, property owned by a married person is classified either as (1) separate property or (2) community property. Not only is this characterization important in determining how the property is to be sold or conveyed, but it also can determine who inherits the property on the owner's death.

Separate Property Property owned by a single person is necessarily his or her separate property. A married person may identify the following as his or her separate property: (1) property acquired before marriage, (2) property obtained by gift under a will or through inheritance, and (3) property obtained with directly traceable separate property funds. Except for property that is the family "homestead," separate property may be sold and conveyed without the permission of the other spouse.

Under Texas laws, should a married person die and be survived by his or her spouse and children and without a will (intestate), the surviving spouse receives a life estate (meaning that the survivor may continue to use the property until his or her death) in one-third of the decedent's separate property estate, and the remainder of the separate property passes to the decedent's children. A person may change that distribution through a will.

Community Property Community property is property owned by either spouse other than separate property. There is a presumption in Texas that all property acquired during marriage is community property. Except for very limited circumstances, title to community property should be conveyed by both spouses.

Should a married person die survived by a spouse and children and without a will, the surviving spouse will inherit all community property if all the decedent's children are also the children of the surviving spouse; otherwise, all the decedent's one-half interest in the community estate of the marriage passes to his or her children, with the surviving spouse keeping only his or her one-half interest. Again, a person may change this distribution through a will.