



**COMMUNITY PROPERTY VS
SEPARATE PROPERTY — AND
WHY WE CARE!**

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COMMUNITY PROPERTY VS SEPARATE PROPERTY

HISTORY OF COMMUNITY PROPERTY

Original concept can be traced to the Visigoths in the 7th Century.

Evident after conquest of France, Holland and Spain

WASHINGTON STATE

Community property has historical reference back to 1869 – 20 years prior to Statehood

There is no historical data explaining how it came about, but strong references indicate a desire to be similar to California's law and an overwhelming majority of bachelors wanting to make Washington Territory attractive to women!

COMMUNITY PROPERTY VS SEPARATE PROPERTY

WHAT IS PROPERTY?

In the context of marriage, property includes:

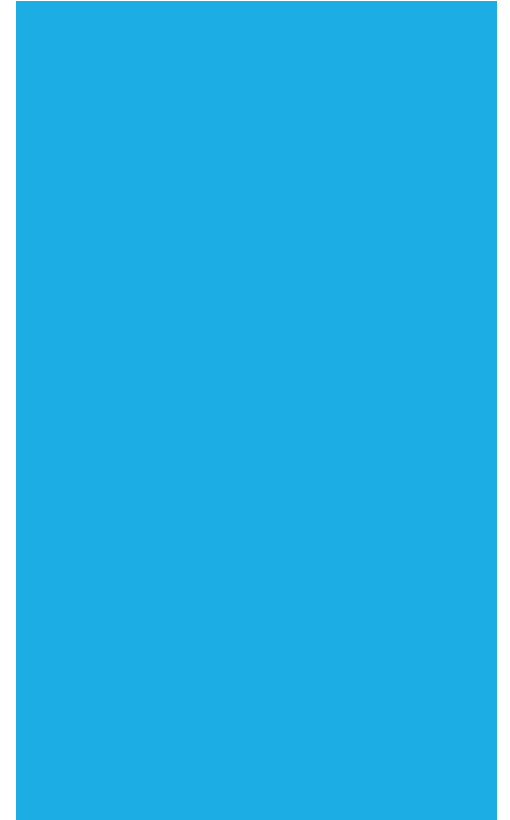
Real property: Houses and land

Personal Property: Furnishings, cars, clothes

Financial Assets: Cash, investments, salaries

Future Interests: Pension funds, Life Insurance

Contractual Rights



COMMUNITY PROPERTY VS SEPARATE PROPERTY

COMMUNITY PROPERTY

Washington is a community property state

Each spouse is regarded as contributing to the well being of the community and equally shares in the financial well being of the community – regardless of who makes more money

Each spouse has a one-half interest in any property acquired by the marital community

COMMUNITY PROPERTY VS SEPARATE PROPERTY

MONEY FLOWING INTO THE COMMUNITY

Almost any money that a spouse earns during marriage is considered community property

This includes:

- Salaries, wages and other compensation
- “Windfalls”
- Sale of community property
- Interest and rents from community property

COMMUNITY PROPERTY VS SEPARATE PROPERTY

MONEY FLOWING OUT OF THE COMMUNITY

In general, property *obtained* by the couple with community funds becomes community property



COMMUNITY PROPERTY VS SEPARATE PROPERTY

MONEY FLOWING INTO THE COMMUNITY FROM COMMUNITY PROPERTY

In general, any funds flowing from community property into the community become community funds

- Rent
- Sale
- Investment proceeds
- Interest
- Appreciation

COMMUNITY PROPERTY VS SEPARATE PROPERTY

SEPARATE PROPERTY

There is such a strong presumption that all property acquired during marriage is community property that a spouse claiming it to be his/her separate property must prove his/her assertion by clear convincing and unequivocal proof. (Scott v. Currie, 7 Wn 2nd 301 and In Re Witte's Estate, 21 Wn 2nd 112)

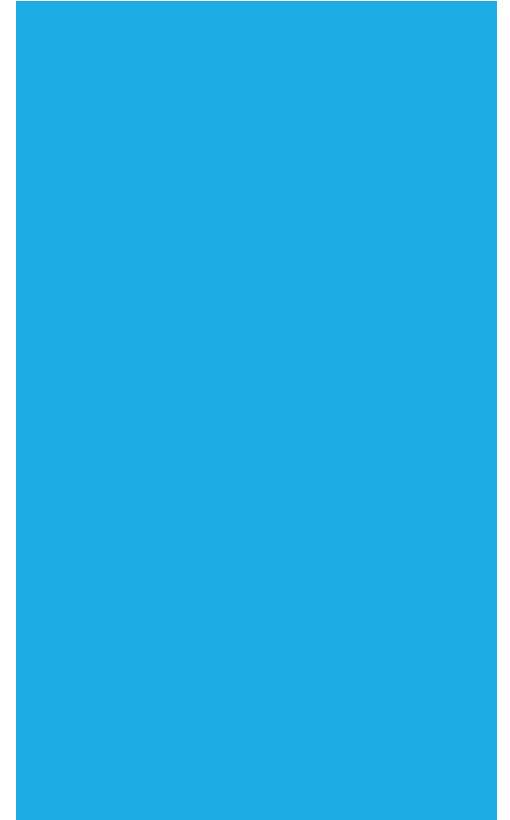
However, some property is considered the separate property of one spouse or the other

COMMUNITY PROPERTY VS SEPARATE PROPERTY

SEPARATE PROPERTY

Separate Property Includes:

- Property held by a spouse *prior* to marriage
- Property received as a gift or inheritance by one spouse
- Rents, interests, or profits from any separate property



COMMUNITY PROPERTY VS SEPARATE PROPERTY

SEPARATE PROPERTY

New property purchased with the proceeds of separate property is considered separate property

How do you prove it?

This concept is called *tracing (follow the money)*

- If the money used to obtain property came from the community, the new property is community property
- If the money used to obtain property came from one spouse's separate property, the new property is that spouse's separate property

COMMUNITY PROPERTY VS SEPARATE PROPERTY

Wife receives inheritance from father

Wife uses inheritance to buy new car

The car is the wife's separate property

COMMUNITY PROPERTY VS SEPARATE PROPERTY

COMMUNITY EXPENDITURES ON SEPARATE PROPERTY

Two common situations arise when one spouse owns separate property, such as a house, prior to marriage:

- The community uses its labor to improve the house
- The community pays the mortgage on the house from community funds

COMMUNITY PROPERTY VS SEPARATE PROPERTY

COMMUNITY LABOR

When the community exerts its labor on separate property, it creates a community interest for that value in the property!

- For example, if a wife owns a house and the husband builds a new deck that causes the value of the house to increase by \$50,000, the *community* now has a \$50,000 interest in the house.

COMMUNITY PROPERTY VS SEPARATE PROPERTY

COMMUNITY PAYS MORTGAGE

When the community pays mortgage on separate property owned by one spouse, that spouse owes the community for that expenditure

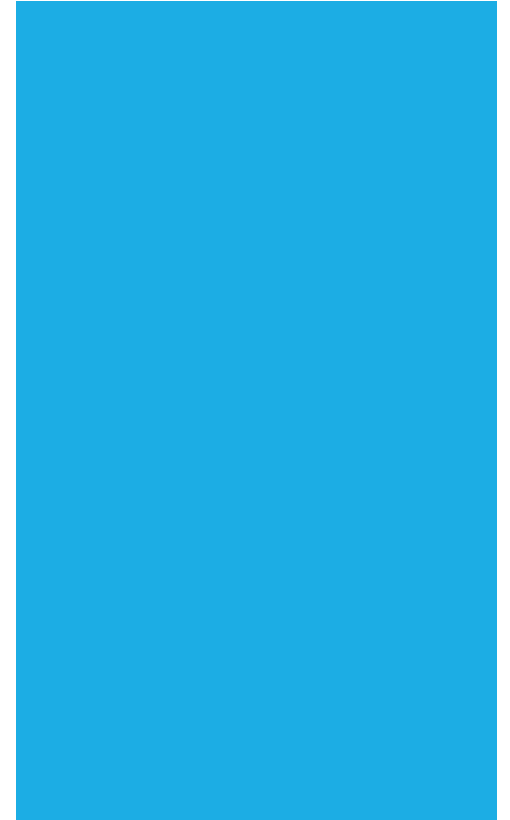
- For example, if the mortgage on the wife's house is paid with her salary while the couple is married, she owes the *community* the value of all of those mortgage payments

COMMUNITY PROPERTY VS SEPARATE PROPERTY

THE HOUSE

The house is the wife's separate property, however, the *community* has an interest in the house from

- The mortgage payments made during the marriage from the community
- The labor that the husband did on the house



COMMUNITY PROPERTY VS SEPARATE PROPERTY

WHEN DOES COMMUNITY PROPERTY MATTER?

The marriage is dissolved

One spouse dies

One spouse wishes to dispose of some of the community property

COMMUNITY PROPERTY VS SEPARATE PROPERTY

Community Property Agreements

Each must be studied carefully

Some convert separate property to community property

Some declare any property hereafter acquired will be community property but do NOT convert

COMMUNITY PROPERTY VS SEPARATE PROPERTY

WHAT HAPPENS WHEN ONE SPOUSE DEEDS THEIR INTEREST IN COMMUNITY PROPERTY?

Considerations:

Vested interest vs homestead rights

Does that spouse continue to reside? If so, that spouse should join in any conveyance or security instrument to eliminate any possible homestead right

Six months is the time frame used –

See RCW 6.13.050

“A homestead is presumed abandoned if the owner vacates the property for a continuous period of at least six months”

COMMUNITY PROPERTY VS SEPARATE PROPERTY

Snohomish County v. Hawkins

89 P.3d 713, 121 Wash.App. 505 (Wash.App., 2004)

Security Savings v. Busch

523 P.2d 1188, 84 Wn.2d 52 (Wash., 1974)

“...a Quit Claim Deed extinguishes all of the Grantor’s legal and equitable rights in the property...including (her) homestead rights.”

COMMUNITY PROPERTY VS SEPARATE PROPERTY

VESTINGS THAT ARE REALLY ASKING QUESTIONS OR CONSIDERED “RED FLAGS”

John Doe, presumptively subject to the community interest of his spouse, if married

Jane Doe, who acquired title as a single person

Susie Smith, as her separate property

(Each should cause a paragraph to appear under Schedule B, Part I - Requirements or as a numbered exception under Schedule B, Part II – Exceptions)

COMMUNITY PROPERTY VS SEPARATE PROPERTY

HOW TO ANSWER MARITAL STATUS QUESTIONS

- By recitation in the document

Grantors clause in instrument could read: “John Doe, a single man on date of acquiring title and at all times since” or “John Doe, a single man until his marriage to Jane Doe on _____,” and Jane joins in the execution of the document.

- Separate affidavit or statement of fact, executed by the party in question and sent to the title officer (depending on facts other parties may be required to sign forthcoming document(s))

COMMUNITY PROPERTY VS SEPARATE PROPERTY

SCENARIO:

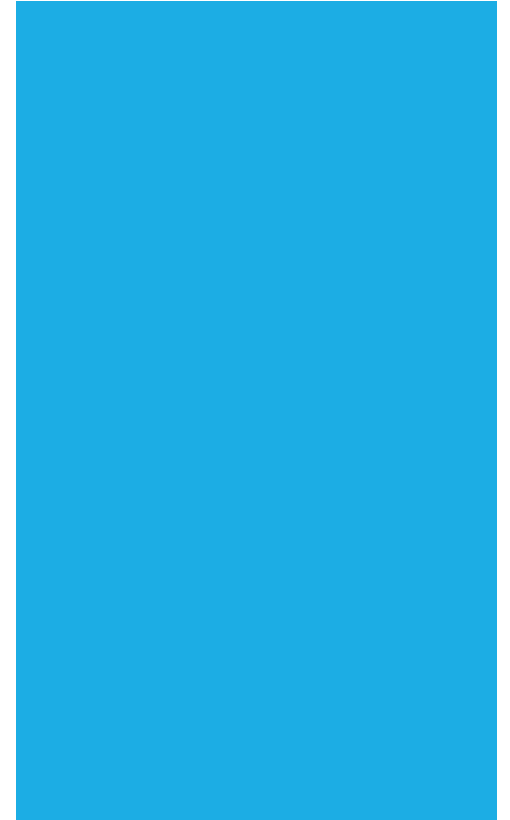
Title is vested as follows:

John Doe, a married man, as his separate property as to an undivided $\frac{1}{2}$ interest and Jane Doe, Trustee of the Jane Doe Trust dated Jan. 2, 2016 as to an undivided $\frac{1}{2}$ interest.

Does this raise any red flags?

Jane Doe is the spouse of John Doe. Does that matter?

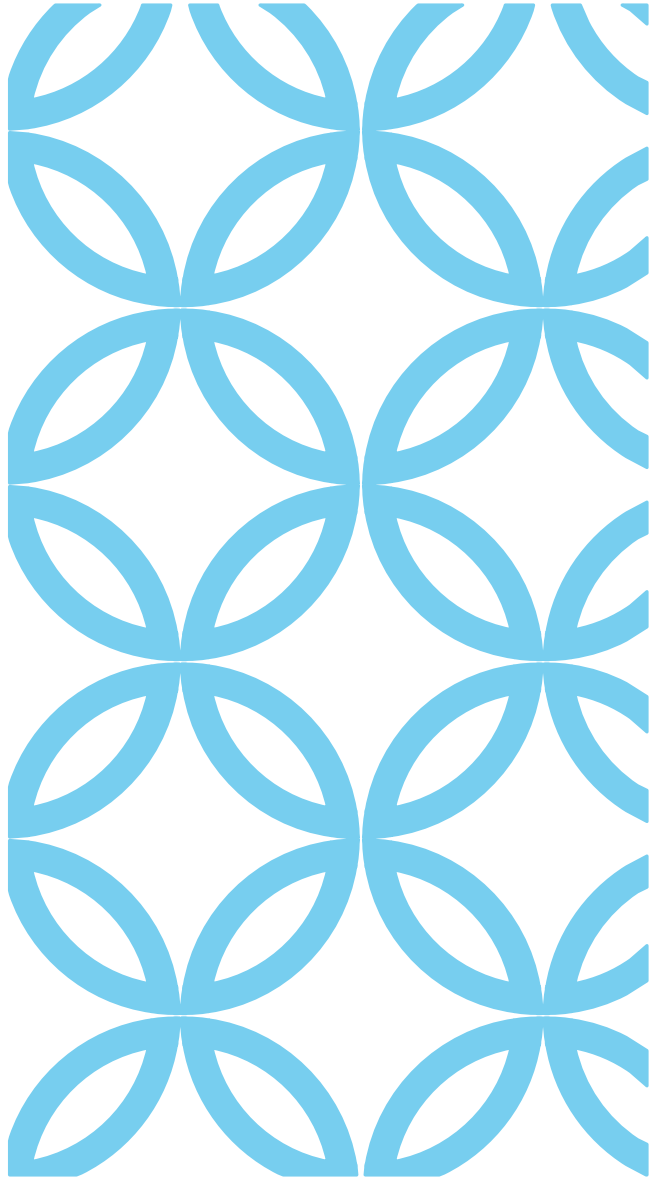
Why?



WHAT'S THE POINT?

Every situation is to
be considered on its
own merits

Consider both the
vested ownership
and the homestead
interest in every
scenario



My sincere thanks to the University of Washington Law School Street Law Resources for allowing my blatant plagiarism, with amendments, of their excellent material – with their permission, of course!

ACKNOWLEDGMENTS