






California Property Law

Separate Property vs. Community Property

| | Separate Property | Community Property |
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|  Definition | <p>Family Code § 770: All property that is owned before marriage; acquired during marriage by gift, bequest, devise, or descent; and the rents, issues and profits of separate property.</p> <p>Family Code § 771: Earnings and accumulations of a spouse while living separate and apart are separate property.</p> | <p>Family Code § 760: Except as otherwise provided by statute, all property, real or personal, wherever situated, acquired by a married person during marriage while domiciled in California is community property.</p> <p>Family Code §§ 125-126: Property acquired outside California that would have been community property if acquired in California is quasi-community property.</p> |
|  Time of acquisition | Owned before marriage or acquired during marriage by gift/inheritance or while living separate and apart. | Acquired during marriage while domiciled in California (with limited statutory exceptions). |
|  Typical examples | <ul style="list-style-type: none">• Property owned before marriage• Inheritance or gift from a third party• Personal injury recovery for pre-marital injury• Earnings while living separate and apart | <ul style="list-style-type: none">• Wages and salaries earned during marriage• Property purchased during marriage with community funds• Retirement benefits earned during marriage• Appreciation of community property |
|  Division on divorce | Each spouse has sole management and control. | Both spouses have equal management, control, and disposition (Family Code § 1100). |
|  Management & control | Remains the separate property of the owning spouse and is not divided (unless transmuted to community). | Presumptively divided equally between the spouses (Family Code § 2550). |

Presumptions of community property and burdens of proof to overcome them

| Presumption (Statutory Basis) | What the presumption means | What is required to rebut | Burden of proof to overcome |
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| <p>1</p> <p>General Community Property Presumption (Fam. Code § 760)</p> | Property acquired during marriage while domiciled in California is presumed to be community property. | Preponderance of the evidence | Show it is more likely than not separate property (e.g., acquired before marriage, by gift/inheritance, or traceable to separate property). |
| <p>2</p> <p>Joint Title Presumption (Fam. Code § 2581)</p> | Property acquired during marriage in joint form is presumed to be community property for purposes of division on divorce. | Clear and convincing evidence | Either (1) a clear statement in the deed or title that the property is separate, or (2) a written agreement between the spouses stating otherwise. Oral agreements are not enough. |
| <p>3</p> <p>Transmutation Presumption (Fam. Code § 852)</p> | Property is presumed to retain its existing character (separate or community) unless transmuted by express written declaration. | Clear and convincing evidence | An express written declaration signed by the adversely affected spouse that the property is transmuted to separate or community property. |
| <p>4</p> <p>Commingled Assets (Under § 760 & Case Law)</p> | When separate and community funds are commingled, the entire asset is presumed to be community property. | Preponderance of the evidence (in practice requires clear, credible tracing) | Trace the separate property contribution with clear, credible records (e.g., bank statements, accounting records). If tracing fails, the asset is characterized as community property. |
| <p>5</p> <p>Quasi-Community Property (Fam. Code §§ 125-126)</p> | Property acquired outside California that would have been community property if acquired in California is presumed to be community (quasi-community) property. | Preponderance of the evidence | Show that the property would not have been community property if acquired in California. |