

LOUISIANA'S COMMUNITY PROPERTY LAW

Matrimonial Regimes

Louisiana's community property law establishes a system of principles and rules governing the ownership and management of the property of married persons as between themselves and toward third parties. Louisiana law governing these rights, known as Matrimonial Regimes, is found in the Louisiana Civil Code at articles 2325-2376.

Marriage impacts property rights of both spouses. The rights of married people when buying or selling property, borrowing money, or obtaining credit are all regulated by law. Property includes, but is not limited to the following: vehicles, houses, land, bank accounts, stocks, pension plans, wages, income, and other things of value.

Property of married persons is either community or separate. If a couple marries in Louisiana or moves to the State of Louisiana, they become subject to Louisiana's community property law automatically. Married couples can modify or opt out of the community property regime by entering into a special contract known as a matrimonial agreement/prenuptial agreement, which can set forth different rules to govern their property. *See* La. Civ. Code art. 2334, *et seq.*

Community Property

The default rule in Louisiana is that property owned by married persons is community property. Among other things, community property includes the following:

- Property acquired during the existence of the marriage through the effort, skill, or industry of both or either spouse;
- Property acquired with community things;
- Property acquired with community and separate property when the value of the separate property is inconsequential to the value of the community property;
- Property donated to the spouses jointly;
- Natural and civil fruits of community property;
- Damages for loss or injury to a thing belonging to the community; and
- All other property not classified as separate property.

La. Civ. Code art. 2338.

The community property laws provide rules on who may incur debts, how those debts are to be paid, and how debts and assets are to be divided between the spouses if the marriage or community ends. It also governs a married person's ability to buy, sell, and control property.

Separate Property

The separate property of a spouse is his exclusively. It includes, but is not limited to, the following:

- Property acquired by a spouse prior to marriage;
- Property acquired by a spouse with separate things;
- Property acquired with separate and community things when the value of the community things is inconsequential to the value of the separate property;
- Property acquired by a spouse by inheritance or donation to him individually;
- Certain damages awarded a spouse; and
- Things acquired by a spouse as a result of a voluntary partition of community property during the community property regime.

La. Civ. Code art. 2341.

Commonly Misunderstood Facts about Property

The way an asset is titled does not always control whether property is separate or community. It is necessary to look at the source of the funds used to purchase the asset. If community funds were used, it is usually community property, even if titled in only one spouse's name.

Marriage alone does not automatically convert existing separate property into community property.

It is possible for separate property to lose its identity as separate property by commingling that property with community property.

Marriage Contracts/Matrimonial Agreements/Prenuptial Agreements

Matrimonial agreements allow for the renunciation, termination or modification of community property. Spouses may enter into a matrimonial agreement before or during marriage as to all matters that are not prohibited by law or public policy; however, the timing of when the contract is entered into determines whether court approval is required.

Prior to marriage, court approval is not required to enter into a matrimonial agreement, and a couple may set forth how they want their property owned and controlled.

After marriage, spouses may enter into a matrimonial agreement that modifies or terminates community property only by filing a joint petition with the court. Then, the court must make a determination that the agreement serves the best interests of the parties and that spouses understand the law and rules.

Married persons from another state that move into Louisiana and establish a domicile in Louisiana that do not wish to have their property become community property have one year to enter into a matrimonial agreement without court approval. La. Civ. Code art. 2329.

Summary:

- Marriage may change your property rights to a community property regime.
- Louisiana's community property law will apply if you do not enter into a marriage contract establishing a separate property regime or otherwise modifying the community property regime.
- You may enter into a matrimonial agreement before or after you are married.
- Contracts entered into after marriage generally require a court's approval.
- A matrimonial agreement must be signed by the spouses in the presence of a notary public and two witnesses or executed under private signature duly acknowledged by the spouses.
- Community property laws may have tax consequences affecting property and inheritance of property.
- It is important to distinguish between federal tax consequences and community property rights under state law.
- If you need more assistance in understanding the community property laws, tax ramifications of marriage, or if you are thinking about entering into a matrimonial agreement, you should consult a private attorney.
- The Lawyer Referral Services referenced in this pamphlet can help you find an attorney who may be able to assist you.
- In large cities, call your legal aid office for assistance if you cannot afford a lawyer.

Resources:

Statewide Lawyer Referral and Information Service

888-503-5747

Louisiana State Bar Association

www.lsba.org

Local Bar Services

Baton Rouge: 225-344-4803

Lafayette: 337-237-4700

New Orleans: 504-525-7453

Shreveport: 318-221-8104

Lake Charles/Southwest Louisiana: 337-497-0090