

LAWYERS LINK



WHAT IS COMMUNITY PROPERTY, AND HOW CAN IT AFFECT YOUR TITLE INSURANCE POLICY?

By: *Julia Chanterwyn, Lawyers Title*

The definition of *community property* is: "property you, your spouse, or both acquire during your marriage (or registered domestic partnership) while you and your spouse (or your registered domestic partner) are domiciled in a community property state."¹

States that observe community property laws are Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin. If you live in one of these states, the law of community property automatically applies once you marry or register a domestic partnership—unless you have a prenuptial

agreement or other legal agreement stating otherwise. It is important to note that each state has its own unique community property laws. For the purpose of this article, we are only providing a broad overview of community property laws.²

So what does this mean? It means that by default, *real property* (i.e. land and or/buildings such as a house) that is conveyed to one married person or domestic partner is assumed to be the property of both persons in that marriage or domestic partnership.³

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To fully understand the concept of community property, it is helpful to be familiar with *separate property*. Separate property can include real property owned by one party before the marriage or domestic partnership, or after legal separation. It can also include real property received by one person in a marriage or domestic partnership as a gift or inheritance. Separate property belongs to that person alone.⁴

Community property laws don't just apply to property acquired during marriage, but also to *debt* incurred during marriage. Any community property can be held liable for repaying the debts of one spouse or domestic partner, whereas separate property cannot—with some exceptions. Those exceptions are legally referred to as “necessities of life,” and include food, clothing, shelter, court fees, and attorney fees.⁵

When it comes to owning real property, you have a number of choices for how to hold title (for more

information on those choices, refer to our vesting chart for your particular state). If you are married or in a domestic partnership, one of those choices is to *hold title as community property*. This means each spouse or partner holds an equal share of the property, and has the right to “dispose of one half of the property, or will it to another party.”⁶

This is where holding title as community property can get complicated. For example, if one spouse wills their half of the property to someone other than their partner, and then predeceases their partner, the surviving partner will share 50% of the property with someone other than their spouse.⁷ For this and many other reasons, it's important to understand all of the legal implications of how you choose to hold title. You should always consult with an attorney before you make such an important decision. For more information about ways of holding title, please ask your Lawyers Title representative.

This information does not, and is not intended to, constitute legal advice; instead, all information is for general informational purposes only.

Information Sources:

¹ Internal Revenue Service, www.irs.gov/publications/p555 (02/14/2020)

² NoLo, www.nolo.com/legal-encyclopedia/marriage-property-ownership-who-owns-what-29841.html (02/14/2020)

³ California Land Title Association, www.clta.org/page/Consumer3/Understanding-Common-Way-of-Holding-Title.htm, (02/14/2020)

⁴ Ibid.

⁵ Stimmel, Stimmel & Roeser, www.stimmel-law.com/en/articles/community-property-debts-when-spouse-liaible-debt-incurred-other-spouse (02/14/2020)

⁶ Investopedia, www.investopedia.com/articles/mortgages-real-estate/08/title-ownership-property.asp (02/14/2020)

⁷ Awo, www.awo.com/legal-guides/ugc/titling-property-the-pros-and-cons-of-each-form-of-title (02/18/2020)



THE ORIGIN OF COMMUNITY PROPERTY LAWS: AN IMPORTANT CHAPTER IN WOMEN'S HISTORY

By: *Julia Chanterwyn, Lawyers Title*

Believe it or not, the origin of community property laws can be found in 5th century Spain, in the Visigothic Kingdom that arose there after the fall of the Roman Empire. The Visigothic Code regarding marriage declared, "When persons of equal rank marry one another, and, while living together, either increase or waste their property, where one is more wealthy than the other; they shall share in common the gains and losses." There are also provisions in the Visigothic Code to recognize the separate property of both spouses.

Hundreds of years later, when the Spanish colonized North America, they brought with them this Code, which formed the foundation for community property laws as we know them today. Especially in the "frontier states," such as California, where women worked hard alongside men in frequently harsh conditions to eke out a living, community property laws made economic sense. For women who had separate property coming into a marriage, the laws provided protection from having their husbands squander that wealth. For women who did not have property coming into a marriage, community property laws gave them "economic recognition" for their contributions to the marriage, even if they worked solely in the home (as most did at that time).

In essence, community property laws recognized marriage as a type of business partnership, where both partners contributed equal labor and should receive equal gains. This was in stark contrast to marriage laws in other states, which in essence made a woman and everything she owned the property of her husband once they were legally wed. During the period of U.S. history when these states were still being formed, community property states would have been far more appealing to women who were looking to marry and start a family because they would be provided some reassurance of economic protection. This was important to the bachelor-heavy frontier states, who hoped that their community property laws would encourage women to join their ranks—and their homes.

This information does not, and is not intended to, constitute legal advice; instead, all information is for general informational purposes only.

Information Source:

Newcombe, Caroline Bermeo, "The Origin and Civil Law Foundation of the Community Property System, Why California Adopted It and Why Community Property Principles Benefit Women," <https://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=1189&context=rrgc> (02/14/2020)



MONTHLY INDUSTRY TERMS

Joint Tenancy

An equal undivided ownership of property by two or more persons. Upon death of any owner, the survivors take the decedent's interest in the property.

Personal Property

Any property which is not real property, e.g., money, savings accounts, appliances, cars, boats, etc.

Tenancy in Common

An undivided ownership in real estate by two or more persons, without right of survivorship – interests need not be equal.