

COMMUNITY PROPERTY IN ESTATE PLANNING

CalCPA
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Speakers:

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COMMUNITY PROPERTY

1. Community Property Jurisdictions

- 1.1 Louisiana, Texas, New Mexico, Arizona, California, Washington, Idaho, Nevada, Wisconsin
- 1.2 Alaska and Tennessee
- 1.3 Foreign countries

2. Separate Property

- 2.1 Owned before marriage
- 2.2 Gifts and Inheritances
- 2.3 Income from separate property
- 2.4 Reinvestments of separate property proceeds

3. Community Property:

All other property acquired *during marriage* by either spouse while living in California, including a possible pro tanto interest in separate property appreciation resulting from services during marriage

- 3.1 “During marriage” (*In re Marriage of Davis*)
- 3.2 Pending legislation

4. Characterization Determined By Parties’ Intent

- 4.1 Written agreements
 - 4.1.1 Prenuptial [Uniform Premarital Agreement Act (Fam. Code §§ 1601 et seq)]; Postnuptial [No Uniform Act (Fam. Code §1620)]
 - 4.1.2 Transmutation
 - 4.1.2.1 Fam. Code §§ 850-852
 - 4.1.2.2 *In re Marriage of Bonvino*
- 4.2 Tracing
- 4.3 Title presumptions (*In re Marriage of Bonvino*)

5. Joint Tenancy v. Community Property

- 5.1 Wills
- 5.2 Probate
- 5.3 Estate tax
- 5.4 Gifts

- 5.5 Income Tax (see Exhibit 1, “Income Tax Aspects of Joint Tenancy v. Community Property”)
- 5.6 Divorce
 - 5.6.1 Fam. Code § 2581 (See Exhibit 2 A)
 - 5.6.2 Lafkas v. Lafkas (See Exhibit 2 B and Fam. Code § 852)
- 6. **Creditors**
 - 6.1 Community debts
 - 6.2 Separate debts
 - 6.3 Joint tenancy
- 7. **Management**
 - 7.1 Joint
 - 7.2 Business
- 8. **Divorce**
 - 8.1 Automatic Temporary Restraining Order (“ATRO”)
 - 8.2 Joint tenancy severance
 - 8.3 Division of property
 - 8.3.1 Retirement plan benefits (Fam. Code § 2610)
 - 8.3.1.1 Fam. Code § 2610
 - 8.3.1.2 Qualified Domestic Relations Order (“QDRO”) for ERISA plans
 - 8.3.2 Debts
 - 8.3.2.1 Fam. Code §§ 910, 912 (community and quasi-community property)
 - 8.3.2.2 Fam. Code § 911 (premarital debts)
 - 8.3.2.3 Fam. Code §§ 913, 914 (separate property)
 - 8.3.2.4 Fam. Code § 916 (post-division debts)
 - 8.3.3 Reimbursement (Fam. Code §§ 2640, 2641)
 - 8.3.4 Quasi-Community property
 - 8.3.5 Specific Types of property:
 - 8.3.5.1 Social media/data stored on “the cloud”/photographs
 - 8.3.5.2 Closely Held Business

8.3.5.2.1 Valuation

8.3.5.2.1.1 Qualifications of expert: ABV/ASA

8.3.5.2.1.2 Standard of value

8.3.5.2.1.3 Corporate law vs family law

8.3.5.2.1.4 Buy-Sell Agreements

8.3.5.2.2 Characterization

8.3.5.3 Real estate

8.3.5.4 Retirement accounts (buy-out v. in-kind division)

8.4 Support payments

8.4.1 Child support (tax free)

8.4.2 Spousal support (IRC §71)

8.4.2.1 IRC §71

8.4.2.2 Fam. Code §§ 4320 et seq.

Income Tax Aspects of Joint Tenancy v. Community Property

Basis of property is defined as the “tax cost,” used to determine gain or loss on disposition of an asset and to determine cost recovery deductions.

If property is purchased, the original basis is the cost.

If property is inherited, the original basis is the fair market value of the property at the decedent's death (or alternate valuation date, if applicable).

I. Examples Of Basis Of Property Inherited:

(a) Separate Property

(1)	Purchase Price:	\$ 10		
(2)	FMV at DOD:	\$100		
(3)	Basis of property to person who inherits =	\$100 (“Stepped-up” from \$10 to \$100)		

(b) Appreciated Joint Property

(1) Joint Tenancy between Husband & Wife

		Husband's Share <u>(Deceased)</u>	Wife's Share <u>(Survivor)</u>
Purchase Price:	\$10	\$5	\$5
FMV at DOD:	\$100	\$50	\$50
Basis of property to surviving spouse =	\$55	\$50	\$5

DECEASED SPOUSE'S ½ interest is “stepped-up”

(2) Community Property

		Husband's Share <u>(Deceased)</u>	Wife's Share <u>(Survivor)</u>
Purchase Price:	\$10	\$5	\$5
FMV at DOD:	\$100	\$50	\$50
Basis of property to surviving spouse =	\$100	\$50	\$50

BOTH SPOUSES' interests are “stepped-up” (“Double Step-Up”).

(c) Depreciated Joint Property

(1) Joint Tenancy between Husband & Wife

		Husband's Share (Deceased)	Wife's Share (Survivor)
Purchase Price:	\$100	\$50	\$50
FMV at DOD:	\$10	\$5	\$5
Basis of property to surviving spouse =	\$55	\$5	\$50

DECEASED SPOUSE'S 1/2 interest is "stepped-down"

(2) Community Property

		Husband's Share (Deceased)	Wife's Share (Survivor)
Purchase Price:	\$100	\$50	\$50
FMV at DOD:	\$10	\$5	\$5
Basis of property to surviving spouse =	\$10	\$5	\$5

BOTH SPOUSES' interests are "stepped-down" ("Double Step-Down").

II. Transmutation Of Appreciated Separate Property To Community Property

- (a) To obtain stepped-up basis on death of either spouse
- (b) Disadvantages