

Texas Legal Zone

H A U G E N L A W F I R M P . C .
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What's Yours is Yours: The Importance of Knowing What is Separate and What is Community Property

"What's yours is yours," this truism has meaning only if you really know what is your property. Far too often the meaning of this phrase doesn't become clear until it is written in a Divorce Decree. The rules are very easy to state, but their meaning may not really hit home until one fundamental rule is clearly stated: in the Texas Constitution a court may not divide Separate Property or give one spouse's Separate Property to the other spouse.

What this means is that "what's yours is yours and what's mine is mine." In a Divorce, if something is characterized as Separate Property, a court does not have the power to divide it or to give it to a soon to be ex-spouse. But this begs the question, "how do you know what's yours?" The answer is, "your Separate Property is yours."



What's yours is yours, or is it?

So what is Separate Property? Separate Property is anything that one spouse brings into a marriage, including any Real Property (home, land, or interests in land etc.) as well as any Personal Property (cars, artwork, furniture etc.). Separate Property is also anything that one spouse receives during the marriage as a gift, or by Inheritance from someone who died without a Will, or as a

Devise from someone who died with a Will. Separate property is also any recovery from personal injury except recovery for lost wages or earnings. Everything else is Community Property that a court can divide or otherwise give to one spouse or the other as a "just and right"

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Alimony: Newer, Longer Lasting, Greater Value

Alimony may have been a dirty word in Texas which is why it is called "Spousal Maintenance." For years Texas had some of the most restrictive qualifications and limits on Alimony. The new Alimony laws created by the 82nd Texas Legislature, which went into effect September 1, 2011, increased the allowable Alimony terms and payments. Although hardly liberal, many consider them more bal-

anced than the previous Alimony laws.

Prior to September 1, 2011, a court could not order a Spousal Maintenance payment that exceeded \$2,500.00 per month, and it could not last more than 3 years. Under the new standards, the maximum monthly payment can reach \$5,000.00 per month, and the payments can go on for up to 10 years depending on the length of the marriage.

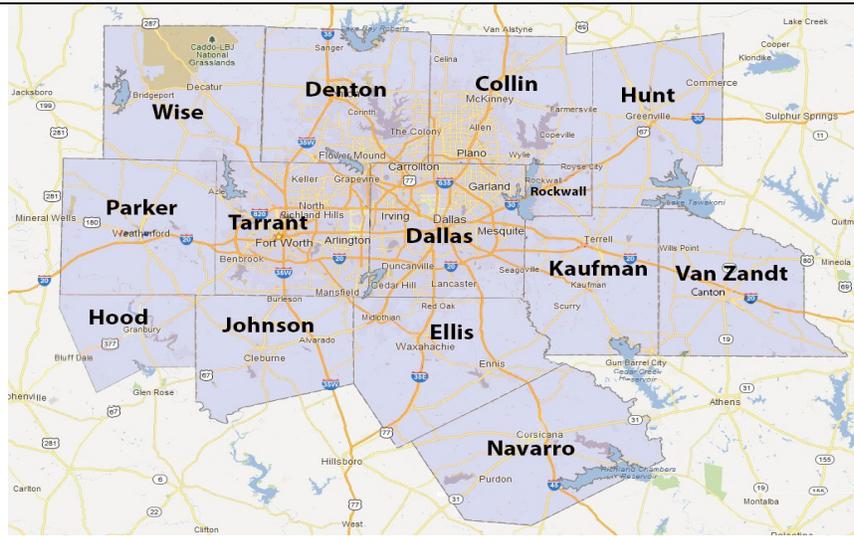
Marriage Duration	Pre 9-1-13	Post 9-1-13
0-10 years	No Alimony	No Alimony
10-20 years	Up to 3 Years of Payments	Up to 5 Years of Payments
20-30 Years	Up to 3 Years of Payments	Up to 7 Years of Payments
30+ Years	Up to 3 Years of Payments	Up to 10 Years of Payments

Geographic Residency Restrictions: If at First You Don't Succeed, Get a Modification Order

Where will the children live after a Divorce? The answer depends on a lot of things. Chief among them are the geographical restrictions placed on where the parent who has primary custody (i.e. the Possessory Conservator) can establish the primary residence. That parent usually has the exclusive right to establish the children's primary residence. The parents may agree to a Possession Order that sets out which parent may establish the children's primary residence and where that primary residence can and cannot be established. If the parents cannot reach such an agreement, then a court will either establish a geographic area or specify that the Conservator may determine the children's primary residence without regard to any geographic restriction.

What happens if you get Custody and have to move? This depends on the geographic residency restrictions. If there is no geographic residency restriction on where the conservator may establish the primary residence of the children, then normally all you would have to do is provide proper notice to your ex-spouse before moving. Similarly, if you are moving within a geographical area designated by the Possession Order and you give your spouse proper notice, you may simply move. But, if there are residency restrictions limiting your ability to relocate, then the problem cannot be solved by hiring a moving van and giving notice.

The Dallas/Fort Worth metroplex is comprised of about 12 to 13 different counties and countless school districts; many of which parents traverse on their daily commutes to and from work. In a time of economic uncertainty, layoffs and relocations are common. Even if a parent is relocated



If you are divorced and have a Standard Possession Order with a contiguous counties restriction on the child's primary residence you will not be able to move with your child from Denton to Parker County

within the metroplex, or laid off and fortunate enough to find a job in the area, that parent may still confront the residency restrictions, especially if the restriction is limited to one county or contiguous counties. If the Conservator with the exclusive right to designate the residency of the child subject to a geographic restriction violates the restriction, there are serious consequences (i.e. Contempt of Court). This presents the parent with a dilemma. The parent must either stay put and commute several hours each day, or seek legal counsel and ask the court for relief, in other words, ask the court for permission to expand the geographic area where the child may reside.

What is a Modification Order? A Modification Order is a court ordered change to a Divorce Decree or other Order affecting a child. A Modification Order can modify only portions of a prior Order or it can entirely replace a prior Order.

How do you get a Modification Order? To succeed in pursuing a Modification, you first must qualify to peti-

tion the court to modify an existing Order. In order to qualify, the facts of your situation must satisfy at least one of three different categories: 1. Your circumstances have substantially changed since the date of your current Order, 2. Your child is over 12 years old and expressed a desire to change his or her primary residence, 3. Your ex-spouse has relinquished the primary care of your children. It is important to remember that the standard for a court in reviewing the request for a Modification is "the best interest of the child." Far too often a request for an expansion of a geographic restriction has more to do with the convenience of the parent rather than the best interest of the child. These types of requests will likely fail in most courts.

Obtaining a Modification Order can be complicated and costly. It is important to consider both you and your children's present and future needs. But, it is critical to consult with an attorney who will take the time to understand your goals and work diligently to accomplish them.

The L.A. Dodgers: A Cautionary Tale

Frank McCourt former owner of the L.A. Dodgers and his wife Jamie McCourt filed for Divorce in 2010. At the time Frank McCourt represented the value of the L.A. Dodgers as \$300 million. Relying on that representation, Jamie McCourt agreed to abandon her claim to any share of the L.A. Dodgers for \$131 million. Afterwards, the L.A. Dodgers filed for Bankruptcy and then sold for a record-breaking \$2.15 billion. The couples legal feud continues as Jamie McCourt is now claiming that Frank McCourt misrepresented the value of the L.A. Dodgers.

While few can relate to the lavish lifestyle that the McCourts enjoyed over the course of their 30-year marriage, their story is relatable. They met in college, married, and raised four sons. Over the course of their marriage they worked hard to build their assets and business. They had disagreements over how to run the business; Frank even fired Jamie as CEO of the Dodgers.

Your family business may not be as high profile as a Major League Baseball team; but it is still very important to know

the value of what you and your soon to be ex-spouse worked so hard to build. That is why it is critical to consult with an attorney who knows the value of building a business, knows how to value a business, and knows how to prove it.



This may not be your family business, but valuating yours is just as important.

The Importance of Knowing What Property is Separate and What Property is Community

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division of the Estate of the parties.

Complicating the issue is the “rebuttable presumption” that all property at the time of Divorce is Community Property. This means that if there is property, then a court will presume that it has the power to divide it. This presumption does not always win the day, as it can be rebutted by clear and convincing evidence that something is Separate Property rather than Community Property, such as

tracing title back to before the date of the marriage, or proof that the source of the property was a Gift, Inheritance, or a Will.

There are measures you can take to protect your Separate Property and prevent its mischaracterization:

- keep good records of the source of any property;
- avoid signing any invoices that characterize something as community property;

- avoid equivocating about giving gifts to spouses;
- avoid commingling assets;
- if there is a family business, then keep accurate records of the profits and start up capital;
- consider addressing any Separate Property with a Prenuptial or Post-nuptial Agreement; and
- consult with your attorney about the separate nature of any property.

John G. Haugen, Attorney at Law

The community deserves to have legal professionals that are interested in service and take the necessary time with each client to ensure that their individual concerns, questions, and fears are fully addressed. Part of that mission is educating the community on the legal issues, which may affect them. To that end, this newsletter is being sent to the communities we serve.

Attorney John Haugen has spent a lifetime serving the needs of his family, community, and Nation. After graduating from West Point (United States Military Academy) in 1984, John Haugen was commissioned in

the U.S. Army and he served our Nation for 5 years, earning the rank of Captain before he was honorably discharged in 1989. John holds a Master of Science Degree from the University of Southern California and a Juris Doctorate from Texas Wesleyan School of Law. He is a member of the Denton, Tarrant, and Dallas County Bar Associations and is licensed to practice before all Texas state courts.

John Haugen lives in Flower Mound with his wife and children.





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**Haugen Law Firm, P.C. serves clients in Lewisville,
Flower Mound, and throughout North Texas.**

Practice Area Overview

DIVORCE

POST-DIVORCE MODIFICATIONS

CHILD CUSTODY

CRIMINAL DEFENSE

DWI/DUI

IMMIGRATION

MOTOR VEHICLE ACCIDENTS

PRODUCTS LIABILITY

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