

Texas Legal Zone

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DIVORCE: WHAT YOU NEED TO KNOW ABOUT COMMUNITY PROPERTY

How does the court divide Community Property in a Divorce?

In Texas, Community Property is defined as property acquired by either spouse during the marriage “by the talent, toil, or other measure of productivity,” including the personal income of a spouse during the marriage. That distinction does not change on the date of separation or the date the divorce is filed, but rather, on the date of the divorce itself.

Chapter 7 – Section 7.001 of the Texas Family Code states:

In a decree of divorce or annulment, the Court shall order a division of the estate of the parties in a manner that the Court deems just and right, having due regard for the rights of each party and any children

of the marriage.

This would lead one to believe that all of the community assets and debt acquired during the marriage would be divided equally, but the law was intended to provide an equitable, not equal, division. The fact is that the court has a great deal of latitude when dividing the marital estate.

For example, after a twenty year marriage, a husband decides to leave his wife and file for divorce. The couple own a home and two cars together. They have a savings account, stocks and the husband has a 401K at work. The husband believes that because Texas is a community property state, the court will divide the assets and debts equally. Although a

50/50 division seems, on the surface, to be a fair distribution, it is not always the case. There are several factors that the court may con-



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A NEW APPROACH TO DIVORCE: COLLABORATIVE LAW

What is Collaborative Law?

Collaborative Law was created as an alternative to litigation and mediation. It was constructed to take the adversarial, fault finding aspects out of the divorce process and instead, work with both parties so that they can concentrate on what is best for their future. The divorcing couple and their attorneys agree to adhere to a standard code of conduct called “Expectations of Conduct.” These include:

- Honesty and cooperation;
- Full and candid disclosure of information;
- Identifying the goals and interests of each party;
- Empowering the parties to make informed decisions;
- Identifying issues, analyzing relevant information, developing options, and understanding consequences;
- Achieving a resolution acceptable to them under the circumstances;
- Suspending court intervention in the collaborative matter while the parties are using the collaborative process.

Many see Collaborative Law as a viable option to traditional divorce methods, one in which a divorcing couple is able to make their own financial and custody decisions, without the court intervening.

What are the advantages of Collaborative Law?

Collaborative Law offers many advantages:

- It provides a safe environment to reduce the conflict and mini-

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PREMARITAL AGREEMENT: DO I NEED A PRENUP?

When we think of premarital agreements, we think of Michael Douglas and Catherine Zeta-Jones or any one of the Kardashians. The term “prenup” creates images of Hollywood stars and real estate moguls, but premarital agreements are not just for the wealthy.

What is a Premarital Agreement?

A premarital or prenuptial (prenup) agreement is a binding contract entered into by two people who plan to marry and is used to protect both parties' assets in case of divorce or death. A premarital agreement may not include provisions for child support or child custody. Common elements of premarital agreements include, but are not limited to:

- The rights and obligations of each of the parties in any of the property of either or both whenever and wherever located;
- The right to sell or use specific properties;
- How the property is divided if the couple separates, divorces or dies;
- The award or elimination of spousal support;
- The making of a will or trust to carry out the provisions of the marital agreement.

In order to establish a binding agreement, it is in the couple's best interest to hire separate attorneys.



Your attorney will know the standard provisions for a premarital agreement and will be able to advise you on any other provisions that may apply to your personal circumstances.

Premarital Agreements are not just for rock stars and pro football players

Premarital agreements are becoming more prevalent regardless of age or financial status.

Young professionals are well aware of current divorce statistics. They understand that a leading factor in many divorces are financial issues and view premarital agreements as an opportunity to address their financial goals and obligations. They are not only interested in protecting their assets, but because many have substantial student loans or credit card debt, they see a premarital agreement as a way to protect themselves from their potential spouses debt.

A large percentage of adults in their 40's, 50's and 60's have already experienced divorce and understand that protecting their assets does not mean that they don't trust their potential spouse, but rather, know firsthand how crucial it is to have clear definitions of what each party considers to be separate property.

In some cases, couples are combining households and children from prior marriages. Premarital agreements are increasingly used to protect the inheritance rights of children from a previous marriage. Many are receiving child support or payments from a divorce settlement. A premarital agreement can ensure that these funds are viewed as separate from the couple's community estate.

Creating a prenuptial agreement does not mean that a couple is anticipating divorce. It simply means that a couple is protecting family ties and inheritance or personal and business assets earned prior to the marriage. Further, in the event of a divorce, a prenuptial agreement may eliminate costly battles over assets and finances.

Finally, premarital agreements should be viewed as a positive tool that allows couples the opportunity to discuss their financial positions prior to marriage and may act as a guide in future financial discussions.

So is a Premarital Agreement for you?

Consult with an attorney experienced in premarital agreements and determine if your circumstances warrant one or not, and what type of provisions your agreement should have, then discuss it with your partner.



What You Need To Know About Community Property (Cont.)

sider when seeking a “just and right” division of property.

What is “Just and Right?”

By its very definition, “just and right” means reasonable or equitable. However, the terms reasonable and equitable can be broadly defined, particularly when it is your property that is being divided. In 1981, the Texas Supreme Court created a coherent standard to provide for an equitable or reasonable division of community property. These are called Murff factors and are based on the Court’s ruling in the matter of Murff v. Murff. They provide the court a framework or guide when weighing a property division.

When does a “Just and Right” division award a spouse more than 50% of the Community Property?

There are many factors that the court may consider when dividing community property. Some of the most important include, but are not limited to:

- Disparity of incomes or earning capacities;
- The benefit which a spouse not at fault would have derived from the estate of the other spouse through continuation of the marriage;
- Education of the spouses;
- Business opportunities of the spouses;
- Differences in the size of each spouse’s separate estates;

- The nature of the property to be divided;
- Fault in the break-up of the marriage (cruelty, adultery, and desertion);
- Relative physical condition of the spouses;
- The disparity of the spouses’ ages;
- Whether a spouse attempts to conceal assets.

Although the court does everything in its power to produce a “just and right” division of community property, a client needs a skilled advocate to communicate on his or her behalf.

A New Approach to Divorce: Collaborative Law (Cont.)

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- minimize its impact on you and your children.
- It allows you the opportunity to divide your assets without court intervention.
- It provides you the opportunity to assemble a team that will assist you in the decision making process. As noted, each party has their own attorney, but many participants find it helpful to include a financial planner, a child specialist, or a mental health professional who are trained in the Collaborative Method.
- Both parties participate in the meetings and no agreement is made unless both parties agree.
- The focus is not based on what has happened in the past, but rather, allows participants to focus on their future goals.
- Participants must enter the Collaborative Process voluntarily, a court cannot order either party to participate.

- You always retain your right to end the Process and have the court decide any unresolved issues.



Is Collaborative Law for me?

Divorce is a difficult and personal issue. There isn’t one answer or method that will work for everyone. However, there is a list of questions that you can ask yourself when considering Collaborative Law:

- *Do you want to end your marriage with respect and integrity?*
- *Is taking a rational and fair approach to dividing your assets more important than seeing yourself as a winner and your spouse as the loser in this process?*
- *Are your children the most important aspect of this process?*
- *Do you want to model for yourself, your spouse, and your children how mature adults handle significant challenges?*

If these questions resonate with you, then Collaborative Law may be an option to consider.

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**Haugen Law Firm, P.C. serves clients in Lewisville,
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