

People often think about Texas community property laws in connection with divorce but don't consider how these laws affect probate. Community property laws can have a profound impact on what happens to your property when you or your spouse pass away.

If you don't have an up-to-date estate planning strategy, your loved ones may be in for an unpleasant surprise in the future.

## Understanding Community Property

First, it is helpful to consider exactly what community property is under Texas law. Most property a married couple acquires during the course of their marriage is treated as community property. This is true even of wages earned solely by one spouse or property one spouse purchased on their own with only one name on the title. Most property you gain while married belongs not only to you but to your spouse as part of a team. You are each considered equal owners, and if you divorce, your community property is split 50/50.

There are some exceptions when it comes to establishing community property. The most notable exception is that property you receive as a gift or inheritance is considered yours individually and is not community property jointly owned with your spouse. However, you may need to take steps to keep the property separate, or over time it could turn into community property.

The property you owned before your marriage also remains your separate property. However, just as with inherited property, if you co-mingle it with marital property or your spouse uses or contributes to it, that separate property can turn into community property.

## What If There is No Will?

People often assume that when one spouse dies, the community property laws automatically give all of that spouse's property to the other spouse. However, this is not always the case. The spouse is entitled to half the community property in most cases. If there is no will and the only children of the deceased are also children of the surviving spouse, then the laws of intestate succession would give all of the community property to the surviving spouse. Any separate property owned by the deceased spouse would be split between the spouse and other family members.

## A Will Can Change Some Things but Not Everything

If the deceased spouse left a will, those provisions often control what happens to the community property, but the will can only affect half of the community property. The surviving spouse gets half of the community property even if they are left out of the will. However, if an asset is titled in the name of the deceased spouse, the surviving spouse will need to take legal action and may need to open probate to get the title put into their own name.

The will can direct the distribution of the remaining half of the community property as well as separate property.

## A Thoughtful Estate Plan Can Ensure the

## Smooth Transfer of Community Property

An estate planning attorney can help you take steps to ensure that your property passes the way you want it to, so long as you don't violate certain public policy standards. With the right plan, the legal burden on family members will be minimal, and they will be able to exercise ownership without unnecessary delays and expense.

To find out how the team at The Nordhaus Firm can help you conserve assets and develop the best plan to protect your family, contact us today.