

TEXAS FAMILY CODE

TITLE 1. THE MARRIAGE RELATIONSHIP

SUBTITLE B. PROPERTY RIGHTS AND LIABILITIES

CHAPTER 3. MARITAL PROPERTY RIGHTS

SUBCHAPTER A. GENERAL RULES FOR SEPARATE AND COMMUNITY PROPERTY

Sec. 3.001. SEPARATE PROPERTY. A spouse's separate property consists of:

- (1) the property owned or claimed by the spouse before marriage;
- (2) the property acquired by the spouse during marriage by gift, devise, or descent; and
- (3) the recovery for personal injuries sustained by the spouse during marriage, except any recovery for loss of earning capacity during marriage.

Sec. 3.002. COMMUNITY PROPERTY. Community property consists of the property, other than separate property, acquired by either spouse during marriage.

Sec. 3.003. PRESUMPTION OF COMMUNITY PROPERTY. (a) Property possessed by either spouse during or on dissolution of marriage is presumed to be community property.

(b) The degree of proof necessary to establish that property is separate property is clear and convincing evidence.

Sec. 3.004. RECORDATION OF SEPARATE PROPERTY. (a) A subscribed and acknowledged schedule of a spouse's separate property may be recorded in the deed records of the county in which the parties, or one of them, reside and in the county or counties in which the real property is located.

(b) A schedule of a spouse's separate real property is not constructive notice to a good faith purchaser for value or a creditor without actual notice unless the instrument is acknowledged and recorded in the deed records of the county in which the real property is located.

Sec. 3.005. GIFTS BETWEEN SPOUSES. If one spouse makes a gift of property to the other spouse, the gift is presumed to include all the income and property that may arise from that property.

Sec. 3.006. PROPORTIONAL OWNERSHIP OF PROPERTY BY MARITAL ESTATES.

If the community estate of the spouses and the separate estate of a spouse have an ownership interest in property, the respective ownership interests of the marital estates are determined by the rule of inception of title.

Sec. 3.007. PROPERTY INTEREST IN CERTAIN EMPLOYEE BENEFITS.

(a) Repealed by Acts 2009, 81st Leg., R.S., Ch. 768, Sec. 11(1), eff. September 1, 2009.

(b) Repealed by Acts 2009, 81st Leg., R.S., Ch. 768, Sec. 11(1), eff. September 1, 2009.

(c) The separate property interest of a spouse in a defined contribution retirement plan may be traced using the tracing and characterization principles that apply to a nonretirement asset.

(d) A spouse who is a participant in an employer-provided stock option plan or an employer-provided restricted stock plan has a separate property interest in the options or restricted stock granted to the spouse under the plan as follows:

(1) if the option or stock was granted to the spouse before marriage but required continued employment during marriage before the grant could be exercised or the restriction removed, the spouse's separate property interest is equal to the fraction of the option or restricted stock in which:

(A) the numerator is the sum of:

(i) the period from the date the option or stock was granted until the date of marriage; and

(ii) if the option or stock also required continued employment following the date of dissolution of the marriage before the grant could be exercised or the restriction removed, the period from the date of dissolution of the marriage until the date the grant could be exercised or the restriction removed; and

(B) the denominator is the period from the date the option or stock was granted until the date the grant could be exercised or the restriction removed; and

(2) if the option or stock was granted to the spouse during the marriage but required continued employment following the date of dissolution of the marriage before the grant could be exercised or the restriction removed, the spouse's separate property interest is equal to the fraction of the option or restricted stock in which:

(A) the numerator is the period from the date of dissolution of the marriage until the date the grant could be exercised or the restriction removed; and

(B) the denominator is the period from the date the option or stock was granted until the date the grant could be exercised or the restriction removed.

(e) The computation described by Subsection (d) applies to each component of the benefit requiring varying periods of employment before the grant could be exercised or the restriction removed.

Sec. 3.008. PROPERTY INTEREST IN CERTAIN INSURANCE PROCEEDS. (a)

Insurance proceeds paid or payable that arise from a casualty loss to property during marriage are characterized in the same manner as the property to which the claim is attributable.

(b) If a person becomes disabled or is injured, any disability insurance payment or workers' compensation payment is community property to the extent it is intended to replace earnings lost while the disabled or injured person is married. To the extent that any insurance payment or workers' compensation payment is intended to replace earnings while the disabled or injured person is not married, the recovery is the separate property of the disabled or injured spouse.