Is What's Mine, Ours? Understanding Community Property

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YOU MAY HAVE HEARD THE TERM "COMMUNITY PROPERTY," but do you know exactly what it means or how it could affect you? Generally speaking, community property refers to property acquired by one or both spouses during the marriage provided the spouses live in a state that has a community property regime. There are not many community property states left, as most states have adopted what is referred to as a "common law of property regime." The remaining community property states are Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington and Wisconsin; with several other states' laws allowing residents to "opt-in" to a community property regime. These states are Alaska, Tennessee, Kentucky and Florida.

What is community property?

While community property laws in the nine community property states differ in a number of ways, they all classify property either as "community property," which is owned one-half by each spouse, or "separate property," which is solely owned by one spouse. In Wisconsin, community property is referred to as "marital property" and separate property is referred to as "individual property." In general, property acquired prior to the marriage and gifts/inheritances are classified as separate property, while property acquired during the marriage is deemed to be community property. In a common law property regime, on the other hand, property is owned by the spouse whose name is on the title. One of the most fundamental features of a community property regime is that title does not indicate ownership. For example, if a married couple residing in Wisconsin deposits income earned during their marriage into an account titled solely in the husband's name, the account is still owned one-half by the wife irrespective of the fact that her name is not on the account.

Why does community property matter?

Whether assets are classified as community property or separate property can have a major impact on many aspects of a married couple's life. For example, it can be relevant to the couple's estate planning, income and estate tax planning, creditors' rights and more. In terms of estate planning, each spouse is only allowed to dispose of one-half of community property at his or her death, which may come as a surprise to some couples who assume that ownership follows title. Community property can be useful when it comes to estate and income tax planning. For example, spouses who reside in community property states are much more likely to have roughly equal estates, which can make it easier to take advantage of certain tax exemptions. Community property also receives a "double step up in basis," which means that built-in appreciation on community property is eliminated at both spouse's deaths. Note, however, that recent legislative proposals have threatened to eliminate this benefit. Finally, the classification of an asset as community or separate property can impact whether or not a creditor of one spouse can recover from that asset. It is important to note that many states, even common law states, have a concept similar to community property at divorce, but only community property states apply this concept during the spouses' marriage and at death.

Understanding how community property laws may (or may not) impact your financial and estate planning is very important. Reinhart's Trusts and Estates Team is well versed on the subject and frequently implements estate plans designed to take advantage of the benefits of community property. If you have questions about community property, estate planning or related matters, contact attorney Kelsey L. Berns.

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