

FAMILY CODE

TITLE 1. THE MARRIAGE RELATIONSHIP

SUBTITLE B. PROPERTY RIGHTS AND LIABILITIES

CHAPTER 3. MARITAL PROPERTY RIGHTS AND LIABILITIES

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.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

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

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

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.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

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.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

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.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

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.

Added by Acts 1999, 76th Leg., ch. 692, Sec. 1, eff. Sept. 1, 1999.

Amended by Acts 2001, 77th Leg., ch. 838, Sec. 3, eff. Sept. 1, 2001.

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.

(f) Repealed by Acts 2009, 81st Leg., R.S., Ch. 768, Sec. 11(1), eff.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

Added by Acts 2005, 79th Leg., Ch. 490 (H.B. 410), Sec. 1, eff. September 1, 2005.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 768 (S.B. 866), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 768 (S.B. 866), Sec. 11(1), eff. September 1, 2009.

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.

Added by Acts 2005, 79th Leg., Ch. 490 (H.B. 410), Sec. 1, eff. September 1, 2005.

SUBCHAPTER B. MANAGEMENT, CONTROL, AND DISPOSITION OF MARITAL PROPERTY

Sec. 3.101. MANAGING SEPARATE PROPERTY. Each spouse has the sole management, control, and disposition of that spouse's separate property.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

Sec. 3.102. MANAGING COMMUNITY PROPERTY. (a) During marriage, each spouse has the sole management, control, and disposition of the community property that the spouse would have owned if single, including:

- (1) personal earnings;
- (2) revenue from separate property;
- (3) recoveries for personal injuries; and
- (4) the increase and mutations of, and the revenue from, all property subject to the spouse's sole management, control, and disposition.

(b) If community property subject to the sole management, control, and disposition of one spouse is mixed or combined with community property subject to the sole management, control, and

disposition of the other spouse, then the mixed or combined community property is subject to the joint management, control, and disposition of the spouses, unless the spouses provide otherwise by power of attorney in writing or other agreement.

(c) Except as provided by Subsection (a), community property is subject to the joint management, control, and disposition of the spouses unless the spouses provide otherwise by power of attorney in writing or other agreement.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

Sec. 3.103. MANAGING EARNINGS OF MINOR. Except as provided by Section [264.0111](#), during the marriage of the parents of an unemancipated minor for whom a managing conservator has not been appointed, the earnings of the minor are subject to the joint management, control, and disposition of the parents of the minor, unless otherwise provided by agreement of the parents or by judicial order.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

Amended by Acts 2001, 77th Leg., ch. 964, Sec. 1, eff. Sept. 1, 2001.

Sec. 3.104. PROTECTION OF THIRD PERSONS. (a) During marriage, property is presumed to be subject to the sole management, control, and disposition of a spouse if it is held in that spouse's name, as shown by muniment, contract, deposit of funds, or other evidence of ownership, or if it is in that spouse's possession and is not subject to such evidence of ownership.

(b) A third person dealing with a spouse is entitled to rely, as against the other spouse or anyone claiming from that spouse, on that spouse's authority to deal with the property if:

(1) the property is presumed to be subject to the sole management, control, and disposition of the spouse; and

(2) the person dealing with the spouse:

(A) is not a party to a fraud on the other spouse or another person; and

(B) does not have actual or constructive notice of the spouse's lack of authority.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

SUBCHAPTER C. MARITAL PROPERTY LIABILITIES

Sec. 3.201. SPOUSAL LIABILITY. (a) A person is personally liable for the acts of the person's spouse only if:

- (1) the spouse acts as an agent for the person; or
- (2) the spouse incurs a debt for necessities as provided by Subchapter F, Chapter 2.

(b) Except as provided by this subchapter, community property is not subject to a liability that arises from an act of a spouse.

(c) A spouse does not act as an agent for the other spouse solely because of the marriage relationship.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

Sec. 3.202. RULES OF MARITAL PROPERTY LIABILITY. (a) A spouse's separate property is not subject to liabilities of the other spouse unless both spouses are liable by other rules of law.

(b) Unless both spouses are personally liable as provided by this subchapter, the community property subject to a spouse's sole management, control, and disposition is not subject to:

- (1) any liabilities that the other spouse incurred before marriage; or
- (2) any nontortious liabilities that the other spouse incurs during marriage.

(c) The community property subject to a spouse's sole or joint management, control, and disposition is subject to the liabilities incurred by the spouse before or during marriage.

(d) All community property is subject to tortious liability of either spouse incurred during marriage.

(e) For purposes of this section, all retirement allowances, annuities, accumulated contributions, optional benefits, and money in the various public retirement system accounts of this state that are community property subject to the participating spouse's sole management, control, and disposition are not subject to any claim for payment of a criminal restitution

judgment entered against the nonparticipant spouse except to the extent of the nonparticipant spouse's interest as determined in a qualified domestic relations order under Chapter 804, Government Code.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1244 (S.B. 2324), Sec. 1, eff. September 1, 2009.

Sec. 3.203. ORDER IN WHICH PROPERTY IS SUBJECT TO EXECUTION. (a) A judge may determine, as deemed just and equitable, the order in which particular separate or community property is subject to execution and sale to satisfy a judgment, if the property subject to liability for a judgment includes any combination of:

- (1) a spouse's separate property;
- (2) community property subject to a spouse's sole management, control, and disposition;
- (3) community property subject to the other spouse's sole management, control, and disposition; and
- (4) community property subject to the spouses' joint management, control, and disposition.

(b) In determining the order in which particular property is subject to execution and sale, the judge shall consider the facts surrounding the transaction or occurrence on which the suit is based.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

SUBCHAPTER D. MANAGEMENT, CONTROL, AND DISPOSITION OF MARITAL PROPERTY UNDER UNUSUAL CIRCUMSTANCES

Sec. 3.301. MISSING, ABANDONED, OR SEPARATED SPOUSE. (a) A spouse may file a sworn petition stating the facts that make it desirable for the petitioning spouse to manage, control, and dispose of community property described or defined in the petition that would otherwise be subject to the sole or joint management, control, and disposition of the other spouse if:

(1) the other spouse has disappeared and that spouse's location remains unknown to the petitioning spouse, unless the spouse is reported to be a prisoner of war or missing on public service;

(2) the other spouse has permanently abandoned the petitioning spouse; or

(3) the spouses are permanently separated.

(b) The petition may be filed in a court in the county in which the petitioner resided at the time the separation began, or the abandonment or disappearance occurred, not earlier than the 60th day after the date of the occurrence of the event. If both spouses are nonresidents of this state at the time the petition is filed, the petition may be filed in a court in a county in which any part of the described or defined community property is located.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.
Amended by Acts 2001, 77th Leg., ch. 217, Sec. 23, eff. Sept. 1, 2001.

Sec. 3.302. SPOUSE MISSING ON PUBLIC SERVICE. (a) If a spouse is reported by an executive department of the United States to be a prisoner of war or missing on the public service of the United States, the spouse of the prisoner of war or missing person may file a sworn petition stating the facts that make it desirable for the petitioner to manage, control, and dispose of the community property described or defined in the petition that would otherwise be subject to the sole or joint management, control, and disposition of the imprisoned or missing spouse.

(b) The petition may be filed in a court in the county in which the petitioner resided at the time the report was made not earlier than six months after the date of the notice that a spouse is reported to be a prisoner of war or missing on public service. If both spouses were nonresidents of this state at the time the report was made, the petition shall be filed in a court in a county in which any part of the described or defined property is located.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

Sec. 3.303. APPOINTMENT OF ATTORNEY. (a) Except as

provided by Subsection (b), the court may appoint an attorney in a suit filed under this subchapter for the respondent.

(b) The court shall appoint an attorney in a suit filed under this subchapter for a respondent reported to be a prisoner of war or missing on public service.

(c) The court shall allow a reasonable fee for an appointed attorney's services as a part of the costs of the suit.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

Sec. 3.304. NOTICE OF HEARING; CITATION. (a) Notice of the hearing, accompanied by a copy of the petition, shall be issued and served on the attorney representing the respondent, if an attorney has been appointed.

(b) If an attorney has not been appointed for the respondent, citation shall be issued and served on the respondent as in other civil cases.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

Sec. 3.305. CITATION BY PUBLICATION. (a) If the residence of the respondent, other than a respondent reported to be a prisoner of war or missing on public service, is unknown, citation shall be published in a newspaper of general circulation published in the county in which the petition was filed. If that county has no newspaper of general circulation, citation shall be published in a newspaper of general circulation in an adjacent county or in the nearest county in which a newspaper of general circulation is published.

(b) The notice shall be published once a week for two consecutive weeks before the hearing, but the first notice may not be published after the 20th day before the date set for the hearing.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

Sec. 3.306. COURT ORDER FOR MANAGEMENT, CONTROL, AND DISPOSITION OF COMMUNITY PROPERTY. (a) After hearing the evidence in a suit under this subchapter, the court, on terms the court considers just and equitable, shall render an order describing or defining the community property at issue that will be subject to the

management, control, and disposition of each spouse during marriage.

(b) The court may:

(1) impose any condition and restriction the court deems necessary to protect the rights of the respondent;

(2) require a bond conditioned on the faithful administration of the property; and

(3) require payment to the registry of the court of all or a portion of the proceeds of the sale of the property, to be disbursed in accordance with the court's further directions.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

Sec. 3.307. CONTINUING JURISDICTION OF COURT; VACATING ORIGINAL ORDER. (a) The court has continuing jurisdiction over the court's order rendered under this subchapter.

(b) On the motion of either spouse, the court shall amend or vacate the original order after notice and hearing if:

(1) the spouse who disappeared reappears;

(2) the abandonment or permanent separation ends; or

(3) the spouse who was reported to be a prisoner of war or missing on public service returns.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

Amended by Acts 2001, 77th Leg., ch. 217, Sec. 24, eff. Sept. 1, 2001.

Sec. 3.308. RECORDING ORDER TO AFFECT REAL PROPERTY. An order authorized by this subchapter affecting real property is not constructive notice to a good faith purchaser for value or to a creditor without actual notice unless the order is recorded in the deed records of the county in which the real property is located.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

Sec. 3.309. REMEDIES CUMULATIVE. The remedies provided in this subchapter are cumulative of other rights, powers, and remedies afforded spouses by law.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

SUBCHAPTER E. CLAIMS FOR REIMBURSEMENT

Sec. 3.401. DEFINITIONS. In this subchapter:

(1) Repealed by Acts 2009, 81st Leg., R.S., Ch. 768, Sec. 11(2), eff. September 1, 2009.

(2) Repealed by Acts 2009, 81st Leg., R.S., Ch. 768, Sec. 11(2), eff. September 1, 2009.

(3) Repealed by Acts 2009, 81st Leg., R.S., Ch. 768, Sec. 11(2), eff. September 1, 2009.

(4) "Marital estate" means one of three estates:

(A) the community property owned by the spouses together and referred to as the community marital estate;

(B) the separate property owned individually by the husband and referred to as a separate marital estate; or

(C) the separate property owned individually by the wife, also referred to as a separate marital estate.

(5) "Spouse" means a husband, who is a man, or a wife, who is a woman. A member of a civil union or similar relationship entered into in another state between persons of the same sex is not a spouse.

Added by Acts 1999, 76th Leg., ch. 692, Sec. 2, eff. Sept. 1, 1999.

Amended by Acts 2001, 77th Leg., ch. 838, Sec. 2, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 768 (S.B. 866), Sec. 11(2), eff. September 1, 2009.

Sec. 3.402. CLAIM FOR REIMBURSEMENT; OFFSETS. (a) For purposes of this subchapter, a claim for reimbursement includes:

(1) payment by one marital estate of the unsecured liabilities of another marital estate;

(2) inadequate compensation for the time, toil, talent, and effort of a spouse by a business entity under the control and direction of that spouse;

(3) the reduction of the principal amount of a debt secured by a lien on property owned before marriage, to the extent the debt existed at the time of marriage;

(4) the reduction of the principal amount of a debt secured by a lien on property received by a spouse by gift, devise, or descent during a marriage, to the extent the debt existed at the time the property was received;

(5) the reduction of the principal amount of that part of a debt, including a home equity loan:

(A) incurred during a marriage;

(B) secured by a lien on property; and

(C) incurred for the acquisition of, or for capital improvements to, property;

(6) the reduction of the principal amount of that part of a debt:

(A) incurred during a marriage;

(B) secured by a lien on property owned by a spouse;

(C) for which the creditor agreed to look for repayment solely to the separate marital estate of the spouse on whose property the lien attached; and

(D) incurred for the acquisition of, or for capital improvements to, property;

(7) the refinancing of the principal amount described by Subdivisions (3)-(6), to the extent the refinancing reduces that principal amount in a manner described by the applicable subdivision;

(8) capital improvements to property other than by incurring debt; and

(9) the reduction by the community property estate of an unsecured debt incurred by the separate estate of one of the spouses.

(b) The court shall resolve a claim for reimbursement by using equitable principles, including the principle that claims for reimbursement may be offset against each other if the court determines it to be appropriate.

(c) Benefits for the use and enjoyment of property may be offset against a claim for reimbursement for expenditures to benefit a marital estate, except that the separate estate of a spouse may not claim an offset for use and enjoyment of a primary or

secondary residence owned wholly or partly by the separate estate against contributions made by the community estate to the separate estate.

(d) Reimbursement for funds expended by a marital estate for improvements to another marital estate shall be measured by the enhancement in value to the benefited marital estate.

(e) The party seeking an offset to a claim for reimbursement has the burden of proof with respect to the offset.

Added by Acts 1999, 76th Leg., ch. 692, Sec. 2, eff. Sept. 1, 1999.

Amended by Acts 2001, 77th Leg., ch. 838, Sec. 2, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 768 (S.B. 866), Sec. 3, eff. September 1, 2009.

Sec. 3.404. APPLICATION OF INCEPTION OF TITLE RULE; OWNERSHIP INTEREST NOT CREATED. (a) This subchapter does not affect the rule of inception of title under which the character of property is determined at the time the right to own or claim the property arises.

(b) A claim for reimbursement under this subchapter does not create an ownership interest in property, but does create a claim against the property of the benefited estate by the contributing estate. The claim matures on dissolution of the marriage or the death of either spouse.

Added by Acts 1999, 76th Leg., ch. 692, Sec. 2, eff. Sept. 1, 1999.

Amended by Acts 2001, 77th Leg., ch. 838, Sec. 2, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 768 (S.B. 866), Sec. 4, eff. September 1, 2009.

Sec. 3.405. MANAGEMENT RIGHTS. This subchapter does not affect the right to manage, control, or dispose of marital property as provided by this chapter.

Added by Acts 1999, 76th Leg., ch. 692, Sec. 2, eff. Sept. 1, 1999.

Amended by Acts 2001, 77th Leg., ch. 838, Sec. 2, eff. Sept. 1,

2001.

Sec. 3.406. EQUITABLE LIEN. (a) On dissolution of a marriage, the court may impose an equitable lien on the property of a benefited marital estate to secure a claim for reimbursement against that property by a contributing marital estate.

(b) On the death of a spouse, a court may, on application for a claim for reimbursement brought by the surviving spouse, the personal representative of the estate of the deceased spouse, or any other person interested in the estate, as defined by Section 3, Texas Probate Code, impose an equitable lien on the property of a benefited marital estate to secure a claim for reimbursement against that property by a contributing marital estate.

(c) Repealed by Acts 2009, 81st Leg., R.S., Ch. 768, Sec. 11(4), eff. September 1, 2009.

Added by Acts 1999, 76th Leg., ch. 692, Sec. 2, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 838, Sec. 2, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 768 (S.B. 866), Sec. 5, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 768 (S.B. 866), Sec. 11(4), eff. September 1, 2009.

Sec. 3.409. NONREIMBURSABLE CLAIMS. The court may not recognize a marital estate's claim for reimbursement for:

- (1) the payment of child support, alimony, or spousal maintenance;
- (2) the living expenses of a spouse or child of a spouse;
- (3) contributions of property of a nominal value;
- (4) the payment of a liability of a nominal amount; or
- (5) a student loan owed by a spouse.

Added by Acts 2001, 77th Leg., ch. 838, Sec. 2, eff. Sept. 1, 2001.

Sec. 3.410. EFFECT OF MARITAL PROPERTY AGREEMENTS. A premarital or marital property agreement, whether executed before,

on, or after September 1, 2009, that satisfies the requirements of Chapter 4 is effective to waive, release, assign, or partition a claim for economic contribution, reimbursement, or both, under this subchapter to the same extent the agreement would have been effective to waive, release, assign, or partition a claim for economic contribution, reimbursement, or both under the law as it existed immediately before September 1, 2009, unless the agreement provides otherwise.

Added by Acts 2001, 77th Leg., ch. 838, Sec. 2, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 768 (S.B. 866), Sec. 6, eff. September 1, 2009.