

# Characterization of Marital Property and The Intersection of Estate Planning and Family Law

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- 1 Overview of property division in Texas
- 2 Characterization of Assets and Liabilities
- 3 Overcoming the Community Property Presumption - Tracing
- 4 Overview of Reimbursement Claims
- 5 Impact of Various Estate Planning Techniques

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## Overview of property division in Texas

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Texas recognizes three estates on marriage dissolution

- Husband's separate estate
- Wife's separate estate
- Community estate

The separate estates are not subject to division in Texas; only the community estate is subject to division.

## Separate v. Community Property

Texas Family Code §3.001 defines separate property

A spouse's separate property consists of:

- ▶ Property owned/claimed by the spouse before marriage
- ▶ Property acquired by the spouse during marriage by gift, devise, or descent
- ▶ Recovery for personal injuries sustained by the spouse during marriage, except recovery for lost earning capacity during marriage

Texas Family Code §3.002 defines community property

Community property consists of the property, other than separate property, acquired by either spouse during marriage

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## Characterization of Income Referable to Inheritance

- Whether acquired by devise or decent, legal title vests to beneficiaries **upon the death** of the decedent – not when the property is actually transferred to the beneficiary by the estate. *Texas Probate Code § 37. Johnson v. McLanglin*
- During the time the property is held by the estate until it is actually conveyed to the beneficiary, any income earned on such property would presumptively be **community property**.
- It is often necessary to trace the income on separate property during the period in which the estate holds the property.
- If rents and profits are specifically made a part of the devised interest under the terms of the will, then the rents and profits can be found to be separate property. *Sullivan v. Skinner*

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[Best Practices and Tips for the Estate Planner](#)

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26<sup>th</sup> Annual Estate Planning, Guardianship and Elder Law Conference session  
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