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Presumption

CA is a community property (CP) state. All property, personal and real, acquired during the marriage is presumed to be community property. All property acquired prior to the marriage is separate property (SP). Property acquired by gift, bequest, or inheritance is presumed to be SP of the acquiring spouse.

Married/Residing in CA

W is a successful accountant and H is an art teacher, who are California residents. H and W married in 2008.

Thus, CP principles will apply to their property. Now, with the CP presumptions in mind, each item will be discussed below.

Date of dissolution

The date of dissolution is the day in which one party separates themselves from the community home and conveys their intention to not want to remain married or attempt to resolve things with the other spouse.

Here, the facts state that W and H permanently separated and H filed for dissolution in 2016. The facts do not indicate that the couple lives separately. However, the facts indicate that prior to the "final hearing," which suggests that the couple are obtaining a divorce. The couple do not seem to have acquired any additional property; however, if they do acquire any additional property there may be some ambiguity as to whether it is CP or SP because it is unclear whether they have physically separated. If they have physically separated, then new property will be SP. If they have not, then new property will be presumed CP until they physically separate as well. This can even be accomplished if one party moves to another quarter of the house.

The condo

Presumption: property acquired through inheritance is presumed to be the SP of the acquiring spouse. Title of the property is not conclusive in most instances, meaning if one spouse were to purchase property using their earnings during the marriage and place the title in their name alone, this does not conclusively indicate that the property is the spouse's SP. In fact, since the property in this example was purchased by CP, it would in fact be CP regardless of the title.

Tracing

In order to determine the characteristic of the property, the funds used to purchase must be traced.

Here, the condo was inherited by H in 2010 when his uncle bequeathed it to H. thus, it is presumed that the Condo is H's SP. Neither H nor W used any funds to purchase the condo.

Thus, when it was acquired, the condo was H's SP.

Avoiding probate

If one dies without a will (intestate) their 1/2 of the community property will be transferred to the other spouse. Further, the spouse may take up to 1/2 of the deceased spouse's SP (if the spouse has a child). Here, there are no facts indicating that the couple has any children from this or previous marriages. Thus, even if the property was probated, it would be given to W as H's issue (if he died during the marriage). Thus, if W was concerned that if H died during the marriage, then she would have not had a real concern because it would have been delivered to her anyways.

Transmutation

Prior to 1985, a spouse could change the characteristic of property from SP to

CP, CP to SP, or SP of one spouse to SP of the other spouse without a writing. If a home was placed in the sole name of the spouse prior to 1975, this was presumed to be a gift to the married woman (married woman's presumption). However, after 1985, transmutations must be in writing.

Here, W insisted that H transfer the title to the condo, into a joint tenancy with W to avoid probate. W will argue that the act of changing the title to a joint tenancy, is enough to change the characteristic of the property. On the other hand, H will argue that since the Condo was his inheritance, that it should remain his SP regardless of the title change. On balance, W has the more persuasive argument. Ultimately, the deed is a writing which evidences the transmutation. While it is true, that H transferred the title under W's direction, nothing indicates that W unfairly persuaded H to do so. Furthermore, H and W likely lived in this condo for the duration of their marriage. Therefore, the title transfer (written) is enough to satisfy the requirement of transmutation which changed the characteristic of the SP to CP.

Disposition

Thus, upon dissolution, the condo will be split evenly between H and W as CP. This either means that the court will require the couple to sell the property and split the proceeds or the court will allow one spouse to live in the condo and divide the other assets accordingly to offset the cost.

Note: If a transmutation did not occur with the title transfer, the condo would still remain H's SP and W would have no rights to it.

The motorcycle

Property that is acquired with both SP funds and CP funds must be traced.

Inheritance

H inherited \$10k from his uncle. This 10k is H's SP due to the rule stated above. H used the 10k as a downpayment on a 20k motorcycle. Therefore he used his SP for half of the price of the motorcycle.

Loan

Loans are presumed to be CP, regardless of who's name the loan is in.

Here, H borrowed 10k from a lender who relied on H's good credit. H then used the loan to purchase the motorcycle. Thus, 1/2 of the motorcycle was purchased using CP.

Joint Account

Joint bank accounts are presumed to be CP. therefore, items purchased with the funds from a joint bank account will be presumed to be CP. Earnings acquired during the marriage are presumed to be CP, regardless of the difference in the amount of income earned.

Here, H and W deposited their earnings into a joint bank account they opened at Main Street Bank. W manages the couples finances. Since the couple deposited their earnings into the account, it is entirely presumed to be CP. H used the funds from the joint bank account to pay off the remaining balance owed on the bike. W will argue that as a successful accountant, she contributed more the the account than H who is an art teacher (a profession not known for being particularly lucrative). However, this difference in earning capacity does not change the characteristic of earnings. There are no facts indicating that the couple entered into a valid prenuptial agreement stipulating anything to the contrary. Thus, the funds in the Joint account are CP.

Disposition

The Bike is 1/2 H's separate property and 1/2 community property. Thus, H has

a right to 1/2 the bike plus 1/2 of the CP 1/2, meaning H is entitled to 3/4 the bike and W is entitled to 1/4.

The camper van

Joint bank accounts are presumed to be CP. therefore, items purchased with the funds from a joint bank account will be presumed to be CP.

Earnings

earnings acquired during the marriage is presumed to be CP. Here, W purchased the camper for H as a gift for his 40th birthday. The camper cost 20k and W paid for it by using their joint bank account. H used the camper van for summer fishing trips with his friends.

Title in H's name alone

The fact that H took title to the property alone is not conclusive.

Transmutation

See rule above.

Here, there is no indication that a written transmutation was completed which would change the characteristic of the camper to H's SP.

Gift

during the marriage, a spouse can use their separate property to purchase a gift for their spouse. However, the gift must not be extravagant to the point to which the community is harmed. Here, W did not use her SP to purchase the camper, she used funds from the CP joint bank account. The fact that she "gifted" this to H does not change the fact that the funds used to purchase it were CP funds. H will argue that he uses the camper for trips with his friends and that W does not even use the camper, but the court will not find this argument persuasive.

future payments

here, the facts suggest that the camper was paid in full by the joint account. Thus, there are no future payments.

disposition

The camper is CP and will be divided in half by the court.

the A1 bank account

Income earned during the marriage is presumed to be CP.

title in W's name alone

Here, W opened an individual account at A1 bank without telling H. She deposited some of her earnings into this account. As stated above, all earnings are considered CP if earned during the marriage. Therefore, the fact that the account was in W's name alone and that H did not know of the account does not indicate that the account is W's SP. H discovered W's individual account containing 50k right before the final hearing on the dissolution.

disposition

The a1 bank account will be split evenly between H and W. H will get 25k and W will get 25k.

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