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CA-Community Property



California(CA) is a community property (CP) state. Property purchased during the course of marriage is community property while property that a spouse obtained prior to marriage, after permanent separation or divorce as well as by gift, bequeath or devise during marriage is considered separate property. (SP)

Here, Harry and Winona were married in California in 2015.

Thus, CA rules of community property will apply.

1. The Acme Stock

Source



Harry had premarital savings of \$10k in a bank account when he married Winona. After marrying Winona he bought \$1k in Acme stock in his own name with a check drawn on the account. Harry had deposited his \$3k salary check into that account and paid \$2k in rent and \$2k in living expenses for he and Winona from this account.

Action

Harry used his premarital savings account to purchase \$1k worth of Acme stock in his name.

Presumption

Because Harry purchased the stock after marrying Winona, the stock will be considered community property. Having a bank account only in one spouse's name does not eliminate the presumption that it community property. Also, because he paid rent and living expenses using checks from that account as well as depositing his salary into the account following his marriage, makes the presumption for CP stronger.

Thus, Winona could make a claim for half of the account and stock, minus her half of rent and living expenses that Harry paid for out of that account.

Tracing



Tracing can be used when one spouse is fighting against the CP presumption, in order to determine whether it is in fact CP or SP.

Here, should Harry's premarital savings be exhausted and he can demonstrate that when he purchased the stock the remaining funds were his SP, he may be able to keep the stock. Also, he could claim reimbursement from the community for the \$2k rent, \$2k living expenses.

Winona could claim half of the value of the stock because it was purchased during the marriage.

Thus, the Acme stock is presumably CP, but there could be a claim for SP.

2. Winona's post-separation disability insurance payments?



Source

During the marriage, Winona purchased disability insurance out of her salary. She later became disabled and could no longer work. As a result, she became entitled to monthly disability insurance payments, which will continue until she reached the age of 65.

Action

The disability insurance was acquired during marriage, using Winona's salary which is community property. When she became disabled and no longer able to work instead of a salary she was receiving insurance payments during the marriage and will continue until she is 65.

Presumption

Because Winona became disabled during the marriage, the payments made during the marriage would be subject to CP reimbursement. Further, the insurance payments depending on whether they were to supplement her salary or was in addition to, a claim could be made by Harry for half.

However, the insurance payments would be Winona's once the dissolution proceedings had begun.

3. The investment account

Source

While Harry and Winona were living separately he used his earnings to gamble at the local casino, winning a large amount of money with which he opened an investment account in his own name. Harry did not tell Winona about his winnings or investment account because she did not approve of gambling.

Action

From Harry's winnings at the casino he opened the investment account in his own name.

Presumption

Here, because Harry and Winona were still married Winona can make a claim for half of the investment account and/or winnings. Any interest that accrued in the account would also be subject to CP. Further, each spouse has a fiduciary duty to the community and by not telling Winona of his winnings or the account he has breached that duty here. If Winona was not aware of the account, it could have been located thru tracing or a financial investigator.

Harry will attempt to claim that he and Winona were separated when he won at the casino and opened the account making it SP. However, separation is when a spouse leaves the marital dwelling with no intent to reconcile. Here, Harry and Winona mutually agreed to live separately, but to go to counseling with the hope of reconciling.

Thus, the community property was still in tact during the winnings and opening the account and Winona can make a claim.

4. The loan for the sailboat.

Source

Harry and Winona concluded that they would not reconcile and Harry filed for dissolution. A few days later, Harry took out a loan to pay for a sailboat.

Action

When Harry took out the loan he had already filed for dissolution. Once a marriage enters permanent separation and dissolution, the marital income ends and everything acquired after is separate property.

Presumption

The presumption for the boat loan is separate property because it was after Harry filed for dissolution and the loan distributor likely relied on Harry's credit alone. When a creditor relies only on one spouse's credit history the presumption is for separate property.

Thus, Winona would not be entitled to pay the loan or claim the boat as community property.

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