



C R E S C E N T T I T L E

Presents:

Louisiana Issues affected by
Marriage and Divorce

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Important Issues & Questions Regarding Divorce

1. Marital Status
2. Type and status of Regime
3. Property Classification
4. What is the status of the regime?
5. What is the status of the Community Property Settlement?



Status of Marriage or Marital Status

- Married
 - Happily married
 - Unhappily married living together
 - Separated – Petition not filed
 - Separated – Petition filed – not final
- Not Married
 - Single
 - Widowed
 - Divorced (have a “Judgment of Divorce”)



Status of Marriage or Marital Status

Basis for a Divorce

- Article 102 * Living separate and apart for separation period **after** filing Petition for Divorce
- Article 103 * Living separate and apart for separation period **before** filing Petition of Divorce
 - * Adultery
 - * Abuse
 - * Felony Conviction



Status of Marriage or Marital Status

Separation Time Periods

- 180 days
(6 months)
 - * No minor children of the marriage
 - * Physical or Sexual abuse or protective order issued
- 365 days
(1 year)
 - * One or more minor children of the marriage



Matrimonial Regime

A matrimonial regime is a system of principles and rules governing the ownership and management of property of married persons as between themselves and toward third persons.



Matrimonial Regime

Kinds of Matrimonial Regimes

- Legal Regime – Community of Acquets and Gains
 - “Community Property” Regime”
- Contractual Regime – Separation of Property
 - “Separate Property” Regime”
- Partly Legal & Partly Contractual



Matrimonial Regime

Contractual Regimes are Created by Matrimonial Agreement

- A matrimonial agreement is a contract establishing a regime of separation of property or modifying or terminating the legal regime.
- The provisions of the legal regime that have not been excluded or modified by agreement retain their force and effect.



Matrimonial Regime

Exclusion or Modification of Matrimonial Regime

- Spouses may enter into a matrimonial agreement (“pre-nupt”) that excludes or modifies the matrimonial regime before marriage
- Spouses may enter into a matrimonial agreement that modifies or terminates a matrimonial regime during marriage subject to court approval. If done during marriage, shall be only upon joint petition of the spouses, serves their best interest and they understand the governing principles and rules (“Judgment of Separation of Property”)
- Spouse may subject themselves to the legal regime at any time without court approval
- During the first year after moving into and acquiring a domicile in this state, spouses may enter into a matrimonial agreement without court approval (“post-nupt”)



Classification of Property

Property of married persons is either

COMMUNITY or SEPARATE



Classification of Property

Community Property

- Property acquired during the existence of the legal regime through the effort, skill, or industry of either spouse.
- Property acquired with community things or with community and separate things.
- Property donated to the spouses jointly.



Classification of Property

Community Property

- Property acquired during the existence of the legal regime through the effort, skill, or industry of either spouse.
- Property acquired with community things or with community and separate things.
- Property donated to the spouses jointly.
- Natural and civil fruits of community property damages awarded for loss or injury to a thing belonging to the community.
- All other property not classified by law as separate property.
- Natural and civil fruits of the separate property of a spouse, minerals produced from a separate asset and royalties arising from mineral leases.



Classification of Property

Reservation of Natural & Civil Fruits

- A spouse may reserve the natural and civil fruits from their separate property by a declaration made in an authentic act or private act duly acknowledged. A copy of the declaration shall be provided to the other spouse prior to filing
- As to fruits and revenues of immovables, the declaration is effective when filed in parish in which the immovable is located. For fruits of movables, filed where the declarant is domiciled.



Classification of Property

Presumption of Community

- Things in the possession of a spouse during the existence of a regime of community of acquests and gains are presumed to be community, but either spouse may prove that they are separate property.
- Standard of proof – Preponderance



Classification of Property

Separate Property

- Property acquired by a spouse with separate things or with separate and community things when the value of the community things is inconsequential in comparison to value of the separate thing used.
- Property acquired by a spouse by inheritance or donation to them individually.
- Damages awarded to a spouse in an action for breach of contract against the other spouse or for the loss sustained as a result of fraud or bad faith in the management of community property by the other spouse.
- Damages or other indemnity awarded to a spouse in connection with the management of their separate property.
- Property acquired by a spouse prior to establishment of a community property regime.
- Things acquired by a spouse as a result of a voluntary partition of the community during the existence of a community regime.



Classification of Property

Transformation or Change of Classification

- Typically requires a transfer between spouses
- Sale of property to a third party changes the form of property not the classification
- Separate funds can change classification if “commingled” with community funds
- Voluntary or Judicial partition of community property
- Donation



Classification of Property

Donation Between Spouses

- Donation by one spouse to the other spouse of their undivided interest in a thing forming part of the community transforms that interest into separate property of the donee (includes natural and civil fruits).
- Donation by one spouse of a thing forming part of their separate property , with the stipulation that it shall be part of the community, transforms the thing into community property.



Classification of Property

Declaration of Acquisition of Separate Property

- A declaration in an act of acquisition that things are acquired with separate funds as the separate property of a spouse may be controverted or subject to challenge by the other spouse unless they concurred in the act.
- Nevertheless, when there has been such a declaration, an alienation, encumbrance, or lease of the thing by onerous title, during the community regime or thereafter, may not be set aside on the ground of the falsity of the declaration.



Classification of Property

Acquisition of Undivided Interest Separate & Community Property

- A spouse's undivided interest in property otherwise classified as separate property remains their separate property if they acquire other undivided interests in the property during the existence of the legal regime



Classification of Property

Management of Community Property

- Each spouse acting alone may manage, control, or dispose of community property unless otherwise provided by law



Classification of Property

Concurrence of Both Spouses is Required for the Alienation, Encumbrance or Lease of:

- **Community immovable**
 - Standing, cut, or fallen timber
 - Furniture or furnishings while located in the family home
 - All or substantially all of the assets of a community enterprise
 - Movables issued or registered in the names of the spouses jointly



Classification of Property

Renunciation of Right to Concur

- A spouse may expressly renounce the right to concur in the alienation, encumbrance, or lease of a community immovable, or some or all of the community immovables, or the community immovables which may be acquired in the future.
- A spouse may also renounce the right to participate in the management of a community enterprise.
- May be for a term not to exceed three years.



Classification of Property

Donation of Community Property

- The alienation of a spouse's community interest to a third party requires concurrence of the spouses – if no concurrence it is an “absolute nullity”.
- A spouse acting alone may make a usual or customary gift of a value commensurate with the economic position of the spouses at the time of the donation.



Classification of Property

Unauthorized Alienation

- When the concurrence of the other spouse is required by law, the alienation, encumbrance, or lease of community property by a spouse is relatively null unless the other spouse has renounced the right to concur.
- The alienation, encumbrance, or lease of the assets of a community enterprise by a non-manager spouse is a relative nullity.



Classification of Property

Authority for Community Entity

- Review of documents creating entity will determine who has authority.
- A spouse not a party to a partnership agreement, member of an LLC or officer in company has no right to the management of the entity, but an entity created during marriage will likely be classified as a community enterprise.



Classification of Property

Judicial Authorization to Manage Community Property

- A spouse may be authorized by the court to act without concurrence of the other spouse upon showing that such action is in the best interest of the family and that the other spouse arbitrarily refuses to concur or that the concurrence may not be obtained due to the physical incapacity, mental incompetence, commitment, imprisonment, temporary absence of the other spouse, or because the other spouse is an absent person.



Status of the Community Property Regime

- Existing
- Terminated



Status of the Community Property Regime

Terminating the Regime of Community Property

- Death or declaration of death of a spouse
- Declaration of nullity of the marriage
- Court Order terminating the community regime (living separate and apart for 30 days before or after filing petition for divorce)
- Judgment of Divorce or Separation of Property
- Matrimonial agreement that terminates the community regime



Status of the Community Property Regime

Regime of Separation of Property “Separate Property”

- A regime of separation of property is established by a matrimonial agreement that excludes the legal regime of acquets and gains or by judgment decreeing separation of property.
- Necessities – jointly liable with other spouse
- Expenses of Marriage – each spouse contributes to the expenses of the marriage as provided in the matrimonial agreement. In the absence of such a provision, each spouse shall contribute in proportion to their means.



Status of the Community Property Regime

Management of Separate Property

- Under the regime of separation of property each spouse acting alone uses, enjoys, and disposes of his property without the consent or concurrence of the other spouse.



Status of the Community Property Regime

Form & Limitations of Matrimonial Agreements

- Shall be made by authentic act or by act under private signature duly acknowledged.
- Cannot renounce or alter the marital portion or the established order of succession.
- Nor may the spouses limit the right that one spouse has under the legal regime to obligate the community or to alienate, encumber or lease community property movables.



Status of the Community Property Regime

Effect Towards Third Person

- A matrimonial agreement, or a judgment establishing a regime of separation of property is effective toward third persons as to immovable property, when filed for the registry in the conveyance records of the parish in which the property is situated and as to movables when filed for registry in the parish or parishes in which the spouses are domiciled.



Status of the Community Property Regime

Judgement of Separation of Property

- When the interest of a spouse in a community property regime is threatened to be diminished by fraud, neglect, or incompetence of the other spouse, or by disorder of the affairs of the other spouse, they may obtain a judgment decreeing separation of property.
- When a spouse is an absent person, the other spouse is entitled to a judgment decreeing separation of property.
- When a petition for divorce has been filed, either spouse may obtain a judgment decreeing separation of property, by rule to show cause and upon proof that the spouses have lived separate and apart without reconciliation for at least 30 days from the date of, or prior to, the filing of the petition for divorce.
- When the spouses have lived separate and apart continuously for a period of six months, a judgment decreeing separation of property shall be granted on the petition of either spouse.



Status of the Community Property Settlement

Community Property Settlement

- Ownership transfer between spouses with equalizing payment
- Order sale of home with disbursement of proceeds
- Disbursement amount or percentage
- Reimbursement payments or allocation



Status of the Community Property Settlement

Reimbursement Between Spouses

- Reimbursement shall be made from the patrimony of the spouse who owes reimbursement.
- An obligation incurred by a spouse during the existence of a community property regime for the common interest of the spouses or for the interest of the other spouse is a community obligation.
- An obligation incurred by a spouse during the existence of a community property regime is presumed to be a community obligation.



Status of the Community Property Settlement

Reimbursement Between Spouses

- Satisfaction of a separate obligation with community property – other spouse entitled to reimbursement for $\frac{1}{2}$ of the amount used
- Satisfaction of a community obligation with separate property – other spouse entitled to reimbursement for $\frac{1}{2}$ of the amount used
- Use of community property for the benefit of separate property – other spouse entitled to reimbursement for $\frac{1}{2}$ of the amount used
- Use of separate property for the benefit of community property – other spouse entitled to reimbursement for $\frac{1}{2}$ of the amount used



Status of the Community Property Settlement

Other Related Issues

- Obligation for attorney's fees and costs in an action for divorce incurred before the date of the judgment of divorce that terminates the community property regime is a community obligation.
- A separate obligation of a spouse is one incurred by a spouse prior to establishing a community property regime, or one incurred during the community property regime though not for the interest of the common interest of the spouses or for the interest of the other spouse.
- An obligation incurred by a spouse after the termination of a community property regime is a separate obligation.
- Restraining orders and court directives
- Non-cooperative spouse
- Contempt of Court
- Cannot alienate community interest to a third person – absolute nullity





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