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## COMMUNITY PROPERTY IN A NUTSHELL

Washington is a community property state. Generally, all property owned by a married person is presumed to be community property, unless the party asserting separate ownership (typically one of the spouses, a creditor or an heir) can prove otherwise. Generally, property acquired before the marriage, property purchased with separate funds or separate credit, rents, profits, interest, or proceeds generated by separate property, property (including money) acquired by gift or inheritance, and earnings after separation are separate property. However, property that would otherwise be separate can become community property, if the separate property is commingled with community property beyond the extent to which it can be traced. Of course, the spouses can enter into agreements characterizing their property as separate or community (e.g., community property or prenuptial agreements).

Generally, each spouse has an equal right of management and control of community property. However, neither spouse acting alone has legal capacity to enter into an agreement to buy, sell, or encumber community real property. Such an agreement is voidable by the non-signing spouse, unless the non-signing spouse has ratified the agreement through his or her consent or acceptance of the benefits from the transaction. However, where only one spouse actively participates in the management of a community business, the managing spouse acting alone can buy, sell or encumber community real property in the normal course of the business.

Legally, either spouse has the power to purchase separate real property with separate funds and/or separate credit, or to sell separate real property without the participation or consent of the non-owning spouse. Practically, however, the title insurance company insuring the title to the property will require a quit claim deed from the non-owning spouse to the owning spouse, a divorce decree or a property settlement agreement when a married person purports to engage in a separate property transaction, in light of the strong presumption in favor of community property. As a practical matter, both spouses should sign an agreement to buy or sell real property

Community property cannot be used to satisfy a separate debt of either spouse. However, a spouse's one-half interest in community property can be used to satisfy a separate judgment arising out of a tort claim (i.e., a civil wrong other than a breach of contract).

Upon divorce, separate property is awarded to the owning spouse, and community property is divided equitably, based upon all the surrounding circumstances of the spouses. Although Washington does not recognize common-law marriages, recent court decisions have extended community property principles to the division of property owned by unmarried domestic partners upon termination of their relationship. *Connell v. Francisco*, 74 Wn. App. 306 (1994).

Each spouse has the power to will away all of his or her separate property and one-half of the community property. Without a will, all community property passes to the surviving spouse, and one-half of the deceased spouse's separate property passes to the surviving spouse and the other half passes to the surviving children, if any.

[See also "Must Both Husband and Wife Sign Agreement Buy or Sell Community Realty?" RE LAW Bulletin No. 019].

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