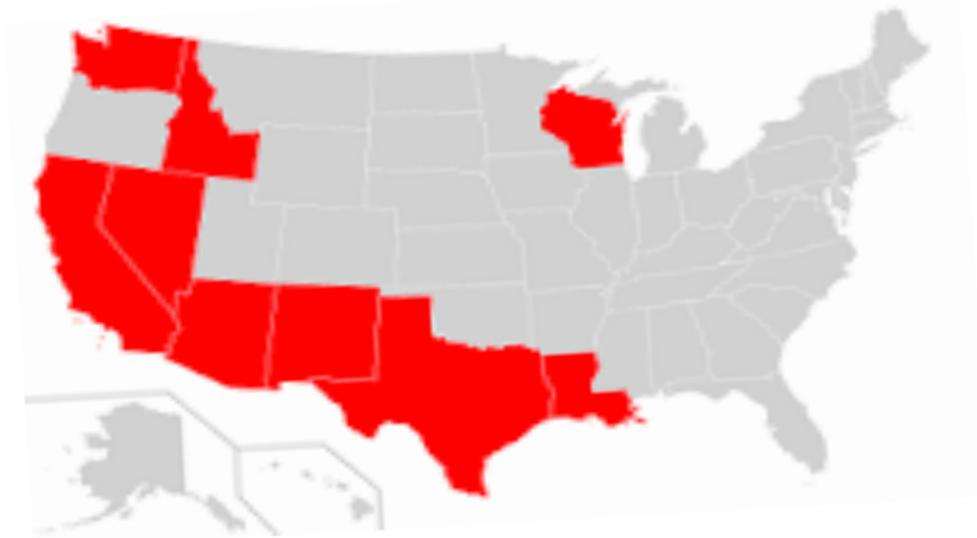


# **CHARACTERIZATION & TRACING**

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## Community Property States (9)



## **TEXAS IS A COMMUNITY PROPERTY STATE**

- Separate property
- Community property
- Mixed

## **WHAT IS SEPARATE PROPERTY?**

- Owned before marriage
- Acquired during marriage by gift
- Acquired during marriage as inheritance
- Recovery for personal injuries

# **GIFTS**

- Elements of a gift
- Gifts from parents or grandparents
- Interspousal gift

# MUTATIONS

- Property recd for separate property is separate
- Property purchased with money from separate property sale is separate as long as it can be traced

# WHY CHARACTERIZATION MATTERS

- Community property presumption
  - Presumption is rebuttable
  - Divisible on divorce
- Court cannot divide separate property
  - Clear and convincing evidence

# INCEPEPTION OF TITLE

- Character separate or community fixed on acquisition

• BUT

- If a spouse takes title to his separate property in the names for both spouses (say refi), presumption of gift made to the other spouse!

# CHARACTERIZATION APPLIED TO...

- Assets
- Liabilities
- Income
- Distributions of profits
- Undistributed profits
- Sales proceeds
- Liquidation proceeds
- Appreciation

# CHARACTERIZATION APPLIED TO...

- Business interests
  - Sole proprietorships
  - Partnerships
  - Corporations

# COMMINGLED PROPERTY

- Separate mixed with community = commingled
- Hopelessly commingled = community property

## TRACING

- Tracing involves establishing the separate origin of the property thru evidence showing the time and means by which the spouse obtained possession of the property.
- Separate property will retain its character thru a series of exchanges so long as the party can overcome the presumption of community property

# **TRACING METHODS & APPROACHES**

# **IDENTICAL SUM INFERENCE METHOD**

- Presumption that when you have an expenditure equal to a deposit and they are close in time to each other – the expenditure is characterized the same as the deposit.

## **MINIMUM BALANCE METHOD**

- An account is traced through each transaction to show the account balance never went below a proven separate property balance. Presumption that only separate property remains after all withdrawals are made.

## **COMMUNITY OUT FIRST RULE**

- When funds available include both separate and community – expenditures are first taken from the community and then from the separate portions.

## **PRO RATA APPROACH**

- When mixed funds are withdrawn – the withdrawal is pro rata in proportion to the respective balances of separate and community.

# COMMUNITY CREDIT RULE

- Property acquired with community credit is presumed to be community.
- Define “community credit”.

# **OVERDRAFTS**

- Any purchase made with an overdraft is an extension of community credit and therefore the purchase is community.

# **ASSETS and PAYMENTS**

- Wages
- Bonuses
- Early retirement benefits
- Retirement
- Military retirement
- Social security benefits
- Insurance
- Lottery winnings
- Mineral interests
- Cash dividends
- Stock dividends
- Stock splits
- Stock options
- Restricted stock