

WHAT HAPPENED TO MY INHERITANCE?

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In California, all property acquired during marriage is presumed to be community property, unless it can be traced to a separate source. So, if our hypothetical spouse, Tracy, earns a \$100,000 bonus, that money is community property, absent an agreement otherwise. However, if Tracy inherits \$100,000 during marriage, the money would be Tracy's separate property.

But does Tracy's inheritance *remain* Tracy's separate property? That depends on how the money was handled as well as the timing of its use. Was it deposited into a separate bank account or a community bank account? Was it used to pay community expenses? Was it used to pay Tracy's spouse's separate debts? Did Tracy buy something with it? Who is on title to the thing purchased with the money?

In some cases, a reimbursement claim must be made within three years of the expenditure or during the divorce, whichever is earlier. This would happen, for example, if Tracy sought a return of separate money spent on a spouse's separate debt, like

child support from another relationship or the spouse's debt incurred prior to marriage.

If Tracy voluntarily used separate property to pay community debt, that payment is presumed to be a gift to the community. So, if Tracy used the \$100,000 to pay medical bills, or other expenses, Tracy would not have a claim for reimbursement.

However, if Tracy spent the money on the purchase of community property or Tracy's spouse's separate property, or to reduce the principal of a loan to purchase property, under Family Code section 2640, Tracy could be entitled to a return of a portion or all of the money.

Section 2640 has three important limitations: 1) there is no reimbursement for expenditures for maintenance, insurance or taxes; 2) the amount reimbursed does not include interest or any increase in the property's value; and 3) if the value of the property decreases, the reimbursement is limited to the value of the property at the time of divorce.

Example 1: Tracy paid \$100,000 for a down payment on a community property home during marriage. At divorce, the home was worth \$500,000. Tracy is entitled to the return of her \$100,000, but the balance would be divided equally.

Example 2: Tracy paid \$100,000 in mortgage payments, which included insurance, interest, and taxes. In that case, Tracy would only receive the return of the amount the \$100,000 reduced the principal of the loan, which will be far less than \$100,000.

Example 3: Tracy paid \$100,000 down on a boat during the marriage, but the boat was only worth \$50,000 at the time the parties' property is divided. Tracy is entitled to \$50,000.

While section 2640 may not be fair in all cases, it is an improvement over the old rule that any purchase during the marriage was presumed to be a gift to the community. At least for the purchase of property, there is some protection of Tracy's inheritance.