



Fraud and Divorce Part II - 2011 Legislative Changes

Texas Family Code §7.009

The 2011 Texas Legislature enacted *Texas Family Code* §7.009 *Fraud on the Community: Division and Disposition of Reconstituted Estate*. The statute provides remedies to injured spouses if community assets are wrongly transferred out of the community estate during marriage. The statute applies to all pending cases and all new cases filed after September 1, 2011.

What is Fraud on the Community?

“It is constructively fraudulent for one spouse to dispose of the other spouse’s interest in community property without that spouse’s knowledge or consent.” *Wright v. Wright* 280 S.W.3d 901 (Tex. App - Eastland, no writ, 2009; *In re Marriage of DeVine*, 869 S.W.2d 415, 428 (Tex. App. - Amarillo 1993, writ. den.). It is constructive fraud because the court does not require that the wronged spouse show fraudulent intent by the spouse who disposed of the property as would otherwise be required to prove fraud. *Jackson v. Smith*, 703 S.W.2d 791 (Tex. App. - Dallas 1985, no writ.

What does the new Statute do?

If the Court determines that a spouse has committed actual or constructive fraud on the community, then the Court **shall** -

“(1) calculate the value by which the community estate was depleted as a result of the fraud on the community and calculate the amount of the **reconstituted estate**; and

(2) divide the value of the reconstituted estate between the parties in a manner the court deems just and right.” (Emphasis added)

What remedies can the Court order?

To compensate for property wrongly transferred out of the community estate the Court can award the injured spouse:

- More than 50% of the existing community estate;

- A money judgment against the offending spouse; or
- Both of the these.

How is this a change?

Since the Texas Supreme Court case, *Schlueter v. Schlueter*, 975 S.W.2d 584 (Tex. 1998), Texas Courts have *not* been able to award anything but a disproportionate division of the community property to the injured spouse. Often this did not adequately compensate the injured spouse nor penalize the offending spouse.

What does this mean in divorce?

In this hypothetical situation - Wife Susan sells all of stock in the community property corporation that she operates to her mother for \$10,000 shortly before she files for divorce. Husband John contends she sold the corporate stock far below the fair market value, committing *fraud on the community*.

If the Court finds that Susan committed *fraud on the community* the Court could award John one of the following:

- More than 50% of the remaining community assets; or
- More than 50% of the community assets if the Court **reconstituted** the estate by calculating the value of the property that was lost due to the sale; or
- More than 50% of the community estate **and** a money judgement against Susan for the reduction of the community estate.

Fiduciary Duty Presentation Available

If you, your employer or your professional organization would like to know more about fiduciary duties and their impact on family law issues, including divorce and property issues, contact my office to schedule a **free one-hour lunch-and-learn continuing education presentation**.

[If you, your client, friend or family member has a family law issue, please call us.](#)