



Economic Contribution Statute Repealed

New Reimbursement Statute §3.402

Effective September 1, 2009 the Economic Contribution portions of Chapter 3, Texas Family Code are repealed - replaced by a new Reimbursement Statute, TFC §3.402. The legislature amended other portions of Chapter 3 to follow this major change.

The repealed Economic contribution statute allowed the community to be reimbursed for money it had spent for such things as reducing the amount owed on the mortgage on a separate property house. But the Economic Contribution Statute also required obtaining appraisals and the exact amount owed on the separate property asset at the time of the wedding and at the time of the divorce. The older information was often difficult to obtain.

The new Reimbursement Statute codifies much of the existing common law of reimbursement into nine different types of reimbursement plus the basic concept of the economic contribution statute - reimbursement for the community's reduction of the debt owed on separate property assets - was maintained. The statute does **not** specifically exclude other types of reimbursement which are not listed in the statute.

Examples, Examples, Examples

Perhaps it is easiest to explain with examples - if one spouse owns a house prior to marriage, the parties live in that house during marriage, and the mortgage on the house is paid with community money during the marriage, then the community estate has a reimbursement claim against the separate property estate because community money reduced the debt and the separate property is worth more as a result. Or suppose, one spouse uses his or her separate property money to install a swimming pool on the community residence property. The separate property would then have a reimbursement claim against the community for the

enhancement in value of house due to the new pool. However, notice it is *enhancement* in value, not a dollar for dollar amount spent on the pool. Generally, this means that if one spouse's separate property pays a debt or makes an improvement to an asset owned by the community or vice versa, then the estate which improves the value of the other estate has a reimbursement claim against the benefited estate.

Offsets Allowed

The statute does allow offsets, except the fair rental value of the primary or secondary residence. For example, the community would have benefited from taking the real estate and mortgage tax deductions on the mortgage payments it paid on the separate property house. The statute also codifies most of the "time, toil and talent" reimbursement provided in the Texas Supreme Court's ruling in *Jensen*. Suppose a spouse owns and operates a separate property business and collects \$75,000 a year as salary. If a manager of that type of company would have been paid \$100,000 a year, then the community has been under compensated by \$25,000.

Equitable Reimbursement

The statute is to be equitably applied rather than forcing the use of the strict algebra equation in the former statute. The concept is enhancement in value and application of offsets, except as prohibited, and not a dollar for dollar accounting to prove money spent. Further, TFC § 3.406 allows, but does not require, the court to order a lien on property to secure a reimbursement claim.

Texas community laws and separate property laws are unique and detailed. There are many other situations that could affect the distribution of property. The examples given above are simply two of the most common. Hopefully divorce and property disputes are never a part of your life. Unfortunately, they are reality for many of us.

If you, your client, friend or family member has a family law issue, please call us.