

Episode Title: Understanding Community Property in California

What does community property mean under California law?

In California, community property laws state that anything acquired during the marriage is considered community property. Many people misunderstand this, thinking that assets in their name alone, like a 401(k) or a car purchased during the marriage, are separate. However, the name on the asset doesn't affect its status as community property. Approximately 75% of the time, if an asset is acquired during marriage, it's considered community property, though there are exceptions.

What is considered separate property in a marriage?

Separate property includes assets owned before marriage, gifts, and inheritances received during the marriage, provided they remain separate and can be traced. For example, if an inheritance is kept in a separate account, it retains its status as separate property. Similarly, assets acquired after separation with separate funds remain separate. However, if separate funds are commingled with community funds, complications can arise.

How are debts like credit cards and loans divided in a divorce?

Debts are treated similarly to assets and are considered community property if incurred during the marriage. The date of separation is crucial as it marks the end of the community period. Debts incurred after this date are generally considered separate. However, there are exceptions, and it's essential to determine when the "us" period ends and the "me" period begins.

What happens if one spouse owns property before the marriage, but its value increases during the marriage?

If property like gold is kept separate and doesn't change character, it remains separate property despite any increase in value. However, if the property's character changes, such as adding a spouse's name to the title, it becomes community property. The increase in value can then be subject to division during a divorce.

Does the date of separation affect how real estate is valued in a divorce?

The date of separation is crucial in determining the value of real estate. If a couple agrees to a buyout, the value is typically set at the time of agreement, often determined by an appraisal. If the property is to be sold, the value is set at the time of sale. The date of separation helps clarify whether the asset is community or separate property.

How are 401(k)s, pensions, and IRAs characterized and divided during a divorce?

Retirement accounts are often considered hybrids, with both community and separate property components. The time rule is used, where the number of years married and contributing to the account is divided by the total years of employment. This determines the community portion, which is then equally divided. A qualified domestic relations order (QDRO) is typically required to split these accounts.

Why is it important to speak with an attorney before making decisions about dividing assets in a divorce?

Divorces involve complex issues, and understanding the implications of decisions on assets like houses and retirement accounts is crucial. Mistakes can be costly and difficult to reverse. Consulting with an attorney or legal coach can provide clarity and help individuals understand their options, ensuring informed decisions are made.