



# Community Property (Swatt)

by Barbara Swatt Engstrom

## Introduction

Community property is a method for determining the character of property, both real and personal, of two people who enter into a marriage. Arizona, California, Idaho, Nevada, New Mexico, Texas, Washington, and Wisconsin all recognize the legal principles of community property. In these jurisdictions, community property law governs the distribution of marital assets and debts once the marital community is dissolved, generally through death or divorce.

This research guide will primarily focus on Washington materials. Materials of a more general scope will be included in the second part of the guide.

## Washington Materials on Community Property

### Statutes

Washington's community property statutes are in the Revised Code of Washington under Title 26: Domestic Relations and Chapter 16: Husband and Wife - Rights and Liabilities - Community Property

Wash. Rev. Code § 26.16.010 et seq.

The text of the community property statutes from RCW Title 26 Chapter 16 are also available for free on the [Washington State Legislature's Web page](#).

### Case Law

One of the fastest ways to find case law dealing with community property issues is to look at the relevant code section in either West's Revised Code of Washington Annotated (RCWA) or Lexis's Annotated Revised Code of Washington (ARCW). The annotations will list cases that have discussed the particular section.

Another shortcut for finding case law is to use the West Topic and Key Number system. The relevant Topic and Key Numbers for community property are Husband and Wife 246 - 276(9). In print, Washington cases can be found using either the Washington Digest or the Pacific Digest.

If you are searching for this Topic and Key Number electronically on Westlaw, the number 205 is substituted for the term Husband and Wife. A search would look like this: 205 k 246.

Finally, secondary sources will not only point out relevant cases, but will include a discussion of the case that will help to put it into context.

## Books

Kenneth W. Weber, [Family and Community Property Law with Forms](#), Vols. 19, 20 & 21 of Washington Practice (West 1997 and supp.)

LOCATION: KFW80. W32 1997 LAW - Open Reserve

These Washington Practice volumes are the most up to date resource available for Washington on community property law. Entries include commentary and references to primary and secondary resources.

Also available on Westlaw - database identifier WA-PRAC.

**Tip:** Use the Table of Contents feature on Westlaw to quickly browse the relevant chapter headings

Kenneth W. Weber, [Family and Community Property Law Handbook: Rules, Statutes and Mandatory Domestic Relations Forms](#), Vol. 22 Washington Practice (West 2005)

LOCATION: KFW80. W32 2005 LAW - Open Reserve

This related Washington Practice volume compiles the rules, statutes and mandatory domestic relations forms for family and community property law.

Also available on Westlaw - database identifier WA-PRAC

Thomas R. Andrews et al. (eds.), [Washington Community Property Deskbook](#) (Washington State Bar Association 2003)

LOCATION: KFW97. W38 2003 LAW - Closed Reserve

Along with Washington Practice, the Washington Community Property Deskbook is the most up-to-date treatise on community property issues in Washington. Contains clear, practitioner-oriented explanations with references to primary and secondary sources.

Also available on Loislaw under Bar Publications > Washington.

Harry M. Cross, [The Community Property Law in Washington](#) (reprinted by University of Washington School of Law 1986) Original publication 61 Wash. L. Rev. 13 (1986).

LOCATION: KFW97. C7 1986 LAW - 4th Floor

This treatise has long been the standard for community property law in Washington. Even though the article is almost 20 years old, it is still regularly cited in court opinions and articles.

Also available on Westlaw, Lexis and HeinOnline

**Tip:** Try looking for additional books in library catalogs. [Seattle University](#), [University of Washington](#) and [King County](#) law library catalogs can all be searched over the Internet. When

searching for Washington materials dealing with community property, use the following Library of Congress subject heading: Community Property - Washington State

## **WSBA Materials on the Web**

[Washington State Bar Association's pamphlet: Marriage in Washington State](#)

[Washington State Bar Association's pamphlet: Dissolution in Washington State](#)

Patricia Novotny, [Yours, Mine, Ours? Property Interests of Unmarried Couples](#), Vol. 55 Iss. 2 Wash. State Bar News (Feb. 2001)

Martin Silver, [Spousal Liability for Federal and State Taxes](#), Vol. 54 Iss. 3 Wash. State Bar News (Mar. 2000)

## **Selected Law Review Articles**

Mark J. Weiss, *Community Property Interests in Separate Property Businesses in Washington*, 40 Gonz. L. Rev. 205 (2004)

Discourse on the characterization of a spouse's business which was separate property at the beginning of the marriage. Contrasts the "all or nothing" rule with recent decisions that have departed from that rule.

Kelly M. Cannon, *Beyond the "Black Hole": A Historical Perspective on Understanding the Non-Legislative History of Washington Community Property Law*, 39 Gonz. L. Rev. 7 (2003)

An interesting look into the history of community property law in general as well as the historical and factual background underlying Washington's adoption of community property law.

Robert F. Brachtenbach, *The Community Property Agreement Revisited*, 29 Gonz. L. Rev. 11 (1993).

Washington Supreme Court Justice Robert Brachtenbach's (retired) 1993 update of an article he wrote on community property agreements (CPA) in 1962. Discusses the relationships of creditor's rights, wills and taxes on CPAs, as well as their effect on titles to vehicles, real property and stock transfers.

William Oltman, *The Implied Termination of Community Property Agreements Upon Permanent Separation*, 14 U. Puget Sound L. Rev. 53 (1990)

Discussion of the effect of a community property agreement that while not defunct on the basis of death or dissolution, is effectively defunct because the spouses are permanently separated.

# General Materials on Community Property

## Books

**NB:** Much of the general literature in the community property arena was published quite sometime ago. These resources are still useful to get a basic understanding of the main points of community property law, but you'll want to be sure to check the current state of the law in the jurisdiction you are researching.

Robert L. Mennell and Thomas M. Boykoff, [Community Property Law in a Nutshell](#) (West 1988)

LOCATION: KF526. Z9M46 1988 LAW - Open Reserve

An excellent starting point for gaining an understanding of the general principles of community property law. Written in language geared for the non-specialist.

William Quimby DeFuniak, [Principles of Community Property](#) (University of Arizona Press 1971)

LOCATION: KF526. D4 1971 LAW - Open Reserve

This book was published over 30 years ago, so it should not be exclusively relied upon for a current analysis of community property law. It is still useful, however, as a basic primer on the principles of community property law and their historical underpinnings.

W.S. McClanahan, [Community Property Law in the United States](#) (Bancroft Whitney 1982 & Supp. 1992)

LOCATION: KF526. M23 1982 LAW - 4th Floor

Again, this book was published a number of years ago and has not been updated recently, but is still useful for a basic outline of community property laws in the eight jurisdictions that recognize it.

**Tip:** When searching for community property materials of general applicability in an on-line library catalog, use the following Library of Congress subject heading: Community Property - United States

## Legal Encyclopedias

Legal Encyclopedias are good starting point for an overview of the general rules of community property law.

American Jurisprudence Second

41 Am. Jur. 2d Husband and Wife § 122-220 (2000 & Supp.)

LOCATION: LAW - Reference Range 2B

Corpus Juris Secundum  
15A C.J.S. Community Property §§ 1-119 (1991 & Supp.)  
LOCATION: LAW - Reference Range 2B

## Practitioner Materials

William D. Farber, *Transmutation of Separate Property into Community Property*, 37 Am. Jur. Proof of Facts 2d 379 (1984 & Supp. 2005)  
LOCATION: KF8933. A43 LAW - Reference

Marc L. Sherman, *Extent of Community and Separate Interests In Real Property*, 19 Am. Jur. Proof of Facts 3d 705, (1993 & Supp. 2005)  
LOCATION: KF8933. A43 LAW - Reference

## Treatises

Thomas R. Andrews et al. (eds.), [Washington Community Property Deskbook](#) (Washington State Bar Association 2003)

Chapter seven of the deskbook covers the federal tax areas of income, gift and taxes.

Also available on Loislaw under Bar Publications > Washington.

Gerald B. Treacy, [Community Property: General Considerations](#) Tax Management Portfolio No. 802- 2nd (Tax Management 2005)

A thorough analysis of the tax implications of community property law. Includes a summary of community property in general, and a detailed discussion of various taxes that affect community property such as gift, estate and generation skipping transfers

A. Mezzullo and Derry W. Swanger, [The Migrant Client : Tax, Community Property, and Other Considerations](#) Tax Management Portfolio No. 803-2nd (Tax Management 2004-)

Discussion of the various issues that must be considered if your client has moved or is moving from a community property state to a common law state (or vice versa).

**Tip:** When searching for materials dealing with the tax issues of community property in an on-line catalog at one of the local law libraries, use the following Library of Congress subject heading: Community Property - Taxation - United States

## On the Web

[Internal Revenue Service Publication 555: Community Property](#)

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