
SPECIAL INSTRUCTION 76—REIMBURSEMENT

The Texas Family Code provides a remedy when funds of one marital estate benefit another marital estate. The different marital estates are the wife's separate property, the husband's separate property, and the community property of husband and wife.

A claim by a conferring estate might arise against the benefited estate in a variety of situations. For example, a husband could use his separate property to make principal payments on notes secured by the wife's separate property or by the community property. A wife could use her separate property in like manner. The spouses could use their community property to add a swimming pool to real property that is the separate estate of either or both of the spouses.

Such claims mature on the dissolution of the marriage or on the death of either spouse. In the latter situation, the rules concerning the remedies provided differ substantially, depending on whether decedent died before September 1, 2009; on or after September 1, 2009, and before September 1, 2023; or on or after September 1, 2023.

The rules providing these remedies do not affect the rule of inception of title or the right to manage, control, or dispose of marital property. Family Code, Sections 3.404(a) and 3.405.

The following rules apply for estates of decedents dying on or after September 1, 2009, and before September 1, 2023.

The Family Code provides for a claim for reimbursement between marital estates under certain circumstances. See Family Code, Sections 3.401 through 3.410.

The Family Code provides a nonexclusive list of claims for reimbursement: (1) payment by one marital estate of the unsecured liabilities of another marital estate; (2) inadequate compensation for the time, toil, talent, and effort of a spouse by a business entity under the control and direction of that spouse; (3) the reduction of the principal amount of a debt secured by a lien on property owned before marriage, to the extent the debt existed at the time of marriage; (4) the reduction of the principal amount of a debt secured by a lien on property received by gift or inheritance during a marriage, to the extent the debt existed at the time the property was received; (5) the reduction of the princi-

pal amount of that part of a debt, including a home equity loan, secured by a lien and incurred during the marriage for the acquisition of or capital improvements to property; (6) the reduction of the principal amount of that part of a debt incurred during the marriage, secured by a lien on property owned by a spouse, for which the creditor agreed to look for repayment solely to the separate marital estate of the spouse on whose property the lien attached, and incurred for the acquisition of or capital improvements to property; (7) the refinancing of the principal amount of debt described in foregoing items (3)–(6), to the extent that the refinancing reduces the principal amount in a manner described in those items; (8) capital improvements to property other than by incurring debt; and (9) the reduction by the community property estate of an unsecured debt incurred by the separate estate of one of the spouses. Family Code, Section 3.402(a).

Courts may not recognize a claim for reimbursement for (1) payment of child support, alimony, or spousal maintenance; (2) living expenses for a spouse or a child of a spouse; (3) contributions of property of nominal value; (4) payment of a liability of a nominal amount; or (5) student loans of a spouse. Family Code, Section 3.409.

The claim for reimbursement does not create an ownership interest in property but does create a claim against the property of the benefited estate in favor of the contributing estate. The claim matures on the death of either spouse or on the dissolution of the marriage. Family Code, Section 3.404(b).

A claim for reimbursement may result in an equitable lien on the benefited property. In the case of the dissolution of a marriage, the statute provides that the court may impose an equitable lien on that property. Family Code, Section 3.406(a).

At the death of a spouse, the court is not involved unless an application for a claim for reimbursement is brought by the surviving spouse, the personal representative of the estate of the deceased spouse, or any other person interested in the estate. If such a claim is properly presented and proved, the court may impose an equitable lien on the property of a benefited estate to secure a claim for reimbursement against that property by a contributing marital estate. Family Code, Section 3.406(b).

The court must resolve a claim for reimbursement by using equitable principles, including the principle that claims for reimbursement may be offset against each other if the court finds that appropriate. The party seeking an offset has the burden of proof with regard to the offset. Family Code, Section 3.402(b), (e).

Benefits for use and enjoyment of property may be offset against a claim for reimbursement, except that a spouse's separate estate may not claim an offset for use and enjoyment of a primary or secondary residence owned wholly or partly by the separate estate against contributions made by the community estate to the separate estate. Family Code, Section 3.402(c).

Reimbursement for funds expended by a marital estate for improvements to another marital estate are measured by the enhancement in value to the benefited estate. Family Code, Section 3.402(d).

The following rules apply for estates of decedents dying on or after September 1, 2023.

Provisions for claims for reimbursement between marital estates are found in the Family Code, Sections 3.401 through 3.411. A claim for reimbursement exists when one or both spouses use property of one marital estate to confer on the property of another marital estate a benefit which, if not repaid, would result in unjust enrichment to the benefited estate. Family Code, Section 3.402(a).

The Family Code provides a nonexclusive list of claims for reimbursement: (1) payment by one marital estate of the debt, liability, or expense of another marital estate that in equity and good conscience should have been paid from the benefited estate's property; (2) use of property by one marital estate to make improvements to the real property of another marital estate, which resulted in the enhancement in the value of the real property; and (3) use of the time, toil, talent, or effort of one or both spouses to enhance the value of the property of a spouse's separate estate beyond that which was reasonably necessary to manage and preserve the spouse's separate property, and for which the community marital estate did not receive adequate compensation. Family Code, Section 3.402(c).

Courts may not recognize a claim for reimbursement for (1) payment of child support, alimony, or spousal maintenance; (2) living expenses for a spouse or a child of a spouse; (3) contributions of property of nominal value; (4) payment of a liability of a nominal amount; or (5) student loans of a spouse. Family Code, Section 3.409.

The claim for reimbursement does not create an ownership interest in property but does create a claim

against the property of the benefited estate in favor of the conferring estate. The claim matures on the death of either spouse or on the dissolution of the marriage. Family Code, Section 3.404(b).

A claim for reimbursement may result in an equitable lien on the benefited property. In the case of the dissolution of a marriage, the statute provides that the court may impose an equitable lien on that property. Family Code, Section 3.406(a).

At the death of a spouse, the court is not involved unless an application for a claim for reimbursement is brought by the surviving spouse, the personal representative of the estate of the deceased spouse, or any other person interested in the estate. If such a claim is properly presented and proved, the court may impose an equitable lien on the property of a benefited estate to secure a claim for reimbursement against that property by a conferring marital estate. Family Code, Section 3.406(b).

The elements to prove a claim for reimbursement to a marital estate are: (1) that the spouse or both spouses used property of the marital estate to confer a benefit on the property of another marital estate; (2) the value of the benefit described in (1); and (3) that unjust enrichment of the benefited estate will occur if the benefited estate is not required to reimburse the conferring estate. Family Code, Section 3.402(b). The value of the benefit conferred is measured as of the date of a trial's commencement. Family Code, Section 3.402(d). The court must resolve a claim for reimbursement by using equitable principles, including the principle that claims for reimbursement may be offset against each other if the court finds that appropriate. Family Code, Section 3.402(f).

The value of the benefit is measured as follows: (1) if the benefit resulted from the use of the conferring estate's property to pay a debt, liability, or expense that in equity and good conscience should have been paid from the benefited estate's property, then the value of the benefit conferred is measured by the amount of the debt, liability, or expense paid by the conferring estate; (2) if the benefit resulted from the use of the conferring estate's property to make improvements on the benefited estate's real property, then the value of the benefit conferred is measured by the enhancement in the value of the benefited estate's real property that resulted from the improvements; or (3) if the benefit resulted from the use of time, toil, talent, or effort to enhance the value of property of a spouse's separate estate, then the value of the benefit conferred is measured by the value of the time, toil, talent, or effort beyond that which was reasonably necessary to manage and pre-

serve the spouse's separate property. Family Code, Section 3.402(d).

A claim for reimbursement may be offset by (1) the value of the use and enjoyment of the property by the conferring estate, except that the separate marital estate of a spouse may not claim an offset for use and enjoyment of a primary or secondary residence owned wholly or partly by the separate marital estate against contributions made by the community marital estate to the separate marital estate; (2) income received by the conferring estate from the property of the benefited estate; and (3) any reduction in the amount of any income tax obligation of the conferring estate by virtue of the conferring estate claiming tax-deductible items

relating to the property of the benefited estate, such as depreciation, interest, taxes, maintenance, or other deductible payments. Family Code, Section 3.402(g). The party seeking an offset to a claim for reimbursement has the burden of proof with respect to the offset. Family Code, Section 3.402(h).

These remedies are nonexclusive and are in addition to any other remedy provided by law. Family Code, Section 3.411.

Note: Different rules apply to claims against estates of decedents dying before September 1, 2009.