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Community Property Agreements



A person who dies is called a decedent. A decedent's property is called an estate. The assets of an estate pass according to one of the following legal methods: (1) under a will, (2) under a statute if no will exists, or (3) by operation of law. In the first and second cases, a judicial proceeding called probate is required. A judge will appoint and oversee the actions of a personal representative who pays the debts and makes distributions for the estate. The most simple and inexpensive way to pass assets, however, is by an operation of law. A document called a community property agreement can help couples make sure all assets pass by operation of law when one of the partners dies.

Under RCW 26.16.120, domestic partners or spouses can enter into an agreement that makes all the couple's assets community property. Under RCW 11.02.005 (15) an asset that passes under a community property agreement is a non-probate asset and is therefore automatically transferred to the surviving spouse or domestic partner at death.

Where a community property agreement has been executed, a surviving spouse need only present the properly executed and recorded documents to the bank, employer or other institution and request the asset to be transferred.

- **Bank Accounts:** Under RCW 30.22.190, a bank must pay a surviving party to a Community Property Agreement...upon receipt of a certified copy of the community property agreement as recorded in the office of a county auditor of the state and an affidavit of the surviving spouse that the community property agreement was validly executed and in full force and effect upon the death of the depositor.
- **Wages:** Under RCW 49.48.120, an employer shall pay [debts owed to decedent] to the surviving spouse...upon presentation of the [community property] agreement accompanied by an affidavit or declaration of the surviving spouse stating that the agreement was executed in good faith between the parties and had not been rescinded by the parties before the decedent's death.
- **Real Estate:** No transfer or re-registration procedures are necessary to enable surviving spouse to have full and clear title.

A Community Property Agreement is not suitable for every situation. A court-administered settlement is more credible, which is important if conflicts or disagreements may arise. Tax saving measures cannot be taken if property is passed under a community property agreement. A personal representative (appointed through probate) is best positioned to bring claims on behalf of a decedent. Also, institutions may require bonds be paid before a transfer is allowed because there is a higher risk of fraud where no court oversight exists.

If the debts of the estate are uncertain then a surviving spouse is wise to follow the procedures for giving notice to creditors, which will reduce the time for creditors to bring claims from twenty-four months to four months.