

CHERNOFF'S LAWYERS IN LIMINE

**COMMUNITY PROPERTY REFRESHER -
LITIGATING ARIZONA COMMUNITY
PROPERTY DISPUTES**

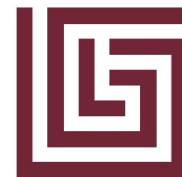
JANUARY 24, 2025

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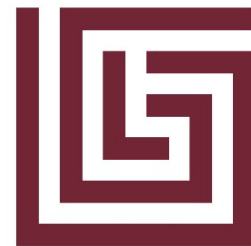


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CHARACTERIZATION IS A LEGAL ISSUE

- The characterization of property, separate or community, is a question of law.
- Usually evaluate at death or divorce.

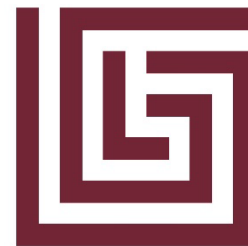
Bell–Kilbourn v. Bell–Kilbourn, 216 Ariz. 521 (App. 2007)



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PRESUMPTIONS

- Property acquired during marriage is presumed community unless acquired by gift, devise or descent. [A.R.S. §§ 25-211\(A\)](#) and [25-213\(A\)](#); [In re Marriage of Flower](#), 223 Ariz. 531 (App. 2010); [Armer v. Armer](#), 105 Ariz. 284 (1970).
- Strong presumption applies to all marital earnings. [Barr v. Petzhold](#), 77 Ariz. 399 (1954).
- Property acquired with marital earnings also presumptively community. [Guerrero v. Guerrero](#), 18 Ariz. App. 400 (App. 1972) *abrogated on other ground by* [A.R.S. § 14-6101](#), as stated in [In re Estate of Agans](#), 196 Ariz. 367, 369 ¶ 8 (App. 1999) (proceeds of the decedent's term life insurance policy not part of probate estate for payment of statutory allowances to the surviving spouse, so naming non-spouse beneficiary was not constructive fraud)
- Spouse seeking to overcome presumption has burden by clear/convincing evidence. [Schickner v. Schickner](#), 237 Ariz. 194, 199, ¶ 22, 348 P.3d 890, 895 (App. 2015).

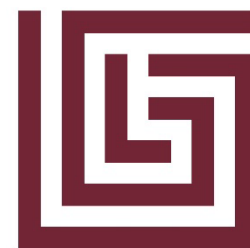


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PROFITS

- Profits of separate property accruing during marriage are either community or separate based on whether the result of:
 - individual toil and application of a spouse, or
 - the inherent qualities of the business itself.
- Doubt resolved in favor of community presumption

[Rundle v. Winters, 38 Ariz. 239 \(1931\); Nelson v. Nelson, 114 Ariz. 369 \(App. 1977\); Barr, 77 Ariz. at 409; Cockrill v. Cockrill, 124 Ariz. 50, 53 \(1979\)](#)



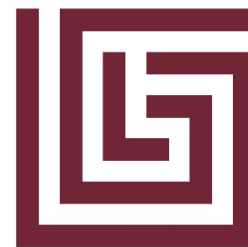
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INSURANCE

➤ Whether life insurance is community property depends:

[Carpenter v. Carpenter, 150 Ariz. 130, 135, 722 P.2d 298, 303 \(App. 1985\), approved in part, vacated in part, 150 Ariz. 62, 722 P.2d 230 \(1986\)](#) (new wife had no interest in husband's life insurance maintained as a premarital separate debt pursuant to a property settlement agreement, with community funds of new wife)

[Gaethje v. Gaethje, 7 Ariz. App. 544, 441 P.2d 579 \(1968\)](#) (term policy had no monetary value at any time until death; interest of husband in the policy prior to his death was community, though policy at one time was paid by husband while divorced)



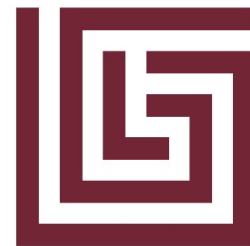
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TRANSMUTATION

Status of property does not change except by:

1. agreement;
2. gift;
3. operation of law; or
4. “otherwise”

Bender v. Bender, 123 Ariz. 90, 93 (App. 1979); *Potthoff v. Potthoff*, 128 Ariz. 557, 561-62 (App. 1981); *Muchesko v. Muchesko*, 191 Ariz. 265, 271, 955 P.2d 21, 27 (App. 1997); *In re Marriage of Weinstein & Locke*, 2 CA-CV 2023-0163-FC, 2024 WL 2354079, at *6 (App. May 23, 2024)



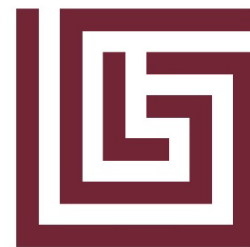
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TRANSMUTATION BY AGREEMENT: SPECIAL TEST FOR POSTNUPTIAL AGREEMENTS

Spouses may agree to divide their property presently and prospectively via postnuptial agreement if:

1. The Agreement is free from any taint of fraud, coercion or undue influence;
2. Each spouse acted with “full knowledge of the property involved and her rights therein;” and
3. The Agreement was fair and equitable.

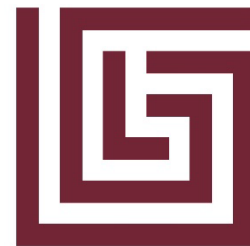
[In re Harber’s Estate, 104 Ariz. 79 \(1969\), Austin v. Austin, 237 Ariz. 201 \(App. 2015\).](#) (Prenuptial Agreements, [A.R.S. § 25-201 et seq.](#))



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BUT, WHAT IS A POSTNUPTIAL AGREEMENT?

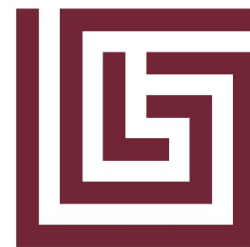
- *In re Harber's Estate, 104 Ariz. 79 (1969)* (express postnuptial agreement)
- *Austin v. Austin, 237 Ariz. 201 (App. 2015)* (LLC operating agreement constituted postnuptial agreement)
- *In re Marriage of Weinstein & Locke, 2 CA-CV 2023-0163-FC, 2024 WL 2354079, at *2 (App. May 23, 2024)* (finding gift of separate property to community property trust transmuted community property; not analyzed as a postnuptial agreement)



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TRANSMUTATION BY OPERATION OF LAW

- Comingling: entire fund is presumed community unless trace separate. [Cooper v. Cooper, 130 Ariz. 257, 259, 635 P.2d 850, 852 \(1981\)](#)
- Separate funds to purchase jointly titled property is presumed community. [Pawlak v. Kortman, 1 CA-CV 06-0561, 2007 WL 5448128, at *3 \(App. Oct. 4, 2007\)](#).
- Divorce ([A.R.S. 14-2804](#))



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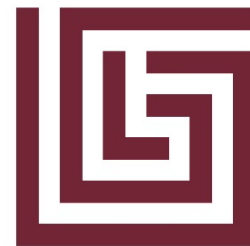
DEEDS

- Spouses “may establish an intention to change the status of property by showing a conveyance to the other spouse coupled with contemporaneous conduct indicating an intention that the grantee-spouse should have the property” [In re Sims' Estate, 13 Ariz. App. 215, 217, 475 P.2d 505, 507 \(1970\)](#)
- [Bender v. Bender, 123 Ariz. 90, 93, 597 P.2d 993, 996 \(App. 1979\)](#) (disclaimer deed correctly reciting that property was sole and separate, purchased with sole and separate property, sufficiently rebutted community presumption)
- [Bell-Kilbourn v. Bell-Kilbourn, 216 Ariz. 521, 169 P.3d 111 \(App. 2007\)](#) (disclaimer deed that “virtually identical to the one in Bender” sufficiently rebutted community presumption)
- Court does not have to accept disclaimer deed if fraud or other circumstances. [In re Marriage of Simmons v. Dudley, 1 CA-CV 07-0586, 2009 WL 936886, at *5 \(App. Apr. 7, 2009\)](#)
- *Quit claim deed ****

HANDLING OF COMMUNITY PROPERTY

- Each has equal rights and owes fiduciary duties in management.
- Can't transfer the other spouse's half or otherwise deprive of their share.
- Aggregate approach.

Gerow v. Covill, 192 Ariz. 9, 18 (App. 1998); *Mezey v. Fioramonti*, 204 Ariz. 599, 65 P.3d 980 (App. 2003), disapproved of on other grounds by *Bilke v. State*, 206 Ariz. 462, 80 P.3d 269 (2003) (fiduciary duties); *In re Estate of Kirkes*, 231 Ariz. 334, 295 P.3d 432 (2013)(one spouse may designate a non-spouse beneficiary of more than 50% of a community account, as long as the other spouse receives ½ of overall community, and other circumstances do not make the distribution fraudulent or unjust)



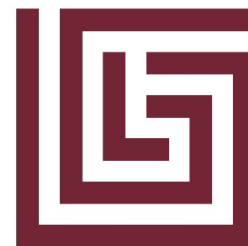
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CLAIMS FOR MISAPPROPRIATION OF COMMUNITY PROPERTY

- Conversion
- Fraudulent conveyance
- Breach of fiduciary duty
- Financial exploitation of a vulnerable adult

[Mezey](#) (allowing wife to pursue claims for conversion and fraudulent conveyance against husband's lover)

[Gaethje, 7 Ariz. App. 544, 441 P.2d 579](#) (naming son as beneficiary on community life insurance policy was not «fraud» on wife if she received her 50% interest overall)

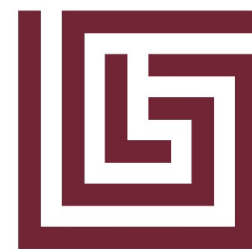


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NOTICES

This presentation is an overview of Arizona's Adult Protective Services Act. This information is not legal advice and is for general information only.

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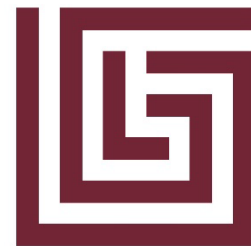
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