

# Relocating into or out of a community property state requires extra estate planning

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When a married couple lives in a community property state, the money earned and property acquired by either spouse during their marriage generally belongs to the “community.”

This means that each spouse has an undivided one-half interest in the property (regardless of how property is titled). Then, when one spouse dies, his or her share of community property goes to the surviving spouse unless the deceased spouse’s will provides otherwise.

If you’re married and live in a community property state, it’s important to be aware of how the community property rules could affect your estate plan. Extra planning is required if you’re relocating into or out of a community property state.

## Character counts

There are nine community property states: Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington and Wisconsin. Typically, property retains its character as community or separate property when you move from one state to another unless you take an action — whether intentional or not — that causes the character to change.

For example, a couple might use a marital property agreement to convert community property into separate property or to agree that income from separate property will also be separate property. Or a couple might unintentionally convert separate property into community property by commingling it with community property.

A common mistake made by couples relocating *from* community property states is to convert their community property into jointly held property. Community property offers a tax advantage: It generally is entitled to a fully stepped-up basis in the hands of a surviving spouse, so he or she can sell it without triggering capital gains tax. With jointly owned property, the surviving spouse receives a stepped-up basis on only *one-half* of the property’s value.

For couples who relocate *to* community property states, a potential trap involves “quasi-community property” — property that would have been community property if the couple had lived in the new state all along. Some states treat such property as community property, which can lead to unpleasant surprises.

### **How will state laws affect your plan?**

When relocating, it’s critical to find out how a new state’s laws will affect your property rights. If necessary, modify your will or use trusts or other tools to ensure that your estate plan continues to operate as desired — or to take advantage of new options that weren’t available in your old state. We can help make the necessary revisions to your estate plan.

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