



Your Separate Property in a California Divorce

What Happens When You Contributed
Separate Property to a Shared Asset

A Note Before You Begin

Going through a divorce is one of the most stressful experiences of a person's life — and the financial consequences can follow you for decades. One of the most underestimated issues in a California divorce is what happens to **separate property** that was used to fund a shared asset — like your home or a joint investment account.

Many clients come to us not realizing that money they brought into the marriage — an inheritance, premarital savings, or a down payment funded with their own funds — may be recoverable in a divorce. But there are specific legal formulas, rules, and documentation requirements that determine whether you can get that money back.

This guide covers:

- The difference between **community property** and **separate property** in California
- What happens when separate property is **contributed to a community asset**
- The **Moore/Marsden formula** for the family home
- The **Pereira** and **Van Camp** formulas for investment and brokerage accounts
- How to protect your claim through **tracing and documentation**
- Answers to the most **frequently asked questions** on this topic

Important Disclaimer: This guide is provided for general educational purposes only and does not constitute legal advice. Every divorce is unique. Please consult a qualified California family law attorney before making any decisions based on information in this guide.

Warm regards,
Mock Law, APC

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Community Property vs. Separate Property

California is a **community property state**. Under Family Code § 760, all property acquired *during* marriage is presumed to be community property — owned equally by both spouses. When a marriage ends in divorce, community property is generally divided 50/50.

What Is Separate Property?

Not everything you own becomes community property just because you got married. Under Family Code § 770, the following are **separate property** and are returned to the owning spouse in a divorce:

- Property you **owned before marriage**
- **Gifts and inheritances** received during marriage
- Rents, profits, and appreciation from your separate property
- Property acquired **after the date of separation**

Why This Distinction Matters

In an ideal world, community and separate property would never overlap. In reality, they almost always do — especially when a spouse uses premarital savings for a down payment, inherits money during the marriage and deposits it into a joint account, or pays a personal mortgage with community income.

The central legal question in many California divorces is not just "what do we own together?" but rather "what did each of us bring in — and can we prove it?"

When a spouse can prove a separate property contribution to a shared asset, they may be entitled to recover that contribution — not just receive a 50/50 split.

When Separate Property Gets Mixed In

The legal term for mixing separate and community funds is **commingling**. When separate property is deposited into a community account, used to purchase a community asset, or contributes to the value of a shared asset, the law requires courts to carefully untangle each party's true ownership interest.

Common Scenarios

The Premarital Home: You owned a home before marriage, kept making payments after the wedding using community income — now both separate and community property have an interest.

The Down Payment: You used an inheritance (separate property) as the down payment on a home you purchased together during the marriage.

The Investment Account: You brought a brokerage account into the marriage; community contributions were added alongside your original separate property funds.

The Mortgage Paydown: Community income was used during the marriage to reduce the mortgage on a home that was originally your separate property.

The Burden Is on You

California courts **presume** that all property acquired during marriage is community property. If you claim a separate property interest in a community asset, the burden is on *you* to prove it by a **preponderance of the evidence** — meaning it is more likely than not that the funds were separate property. This is where many people lose their claim — not because the law doesn't protect them, but because they cannot prove what they contributed.

The Two Key Formulas California Courts Use:

- **Moore/Marsden** — for real property (your home)
- **Pereira / Van Camp** — for investment and brokerage accounts

The Family Home: Two Different Legal Rules

When separate property money is connected to the family home, California law applies **two distinct rules** depending on when the home was acquired and how the separate property funds were used. Mixing them up is one of the most common — and costly — mistakes in divorce litigation.

Rule 1: Family Code § 2640 — The Down Payment Rule

If you used **separate property funds as a down payment** — or to reduce the principal — on a home purchased **during marriage** (which is presumed community property), Family Code § 2640 entitles you to a **dollar-for-dollar reimbursement** of your original contribution. This reimbursement comes off the top before the remaining equity is divided 50/50.

Key points for FC § 2640 claims:

- Reimbursement = your original contribution amount only (no interest, no appreciation)
- You must trace the funds to a separate property source
- Reimbursement cannot exceed the net value of the property at division

Rule 2: Moore/Marsden — The Pre-Marital Home Rule

A separate rule applies when one spouse **owned real property before marriage** as separate property, and during the marriage, community income was used to pay down the mortgage — giving the community an acquired interest in what was originally separate property. California courts use the **Moore/Marsden formula**, established in *In re Marriage of Moore* (1980) and *In re Marriage of Marsden* (1982), to calculate each party's proportionate share of the home's **current fair market value** based on the fraction of the purchase price each funded.

Moore/Marsden: How the Formula Works

- Step 1** Calculate the **separate property fraction**: all SP contributions (premarital equity + SP principal payments) ÷ original purchase price.
- Step 2** Multiply that fraction by the **current fair market value** to get the SP spouse's interest.
- Step 3** Calculate the **community fraction**: community principal paid ÷ purchase price, then multiply by current value.
- Step 4** The SP interest comes off the top; the community interest is divided 50/50; any remaining equity is further allocated.

A Worked Example (Pre-Marital Home — Moore/Marsden)

The Situation: Maria purchased a home for **\$500,000 before marriage**, making an **\$80,000 down payment** from her own premarital savings. After getting married, the couple made mortgage payments together from community income, paying down **\$60,000 in principal** during the marriage. At divorce, the home is worth **\$850,000**. Because Maria owned the home before marriage, Moore/Marsden — not FC § 2640 — governs the division.

Applying Moore/Marsden:

Maria's SP fraction: $\$80,000 \div \$500,000 = 16\%$

Maria's SP interest in home: $16\% \times \$850,000 = \$136,000$

Community fraction (mortgage paid): $\$60,000 \div \$500,000 = 12\%$

Community interest: $12\% \times \$850,000 = \$102,000$ (each spouse receives \$51,000)

Remaining equity: Further allocated between SP and CP interests

In this example, Maria recovers her **\$136,000** separate property interest before the remaining equity is treated as community property and divided 50/50. Without asserting — and proving — this claim, she might walk away with far less.

What About Refinancing?

Refinancing during the marriage can significantly complicate a Moore/Marsden analysis. If a home is refinanced and separate property equity is cashed out, rolled into a larger loan, or otherwise altered, courts must carefully trace how the separate interest was affected. This is one area where detailed records and experienced legal counsel are critical.

Investment Accounts: Pereira & Van Camp

When one spouse contributed separate property funds to a brokerage or investment account that later grew, California courts may use one of two formulas — **Pereira** or **Van Camp** — to determine the separate vs. community allocation. These formulas apply when community labor or management played some role in the account's growth. Which formula the court selects depends on what *primarily* drove the growth.

The Pereira Formula

Named for *Pereira v. Pereira* (1909), this formula is used when **community labor and active management** — not the asset itself — drove the growth. The separate property is credited a reasonable rate of return as determined by the court (courts have applied rates ranging from 7%–10% depending on the circumstances), and everything above that return is community property.

Pereira Formula:

SP Interest = SP contribution + (SP contribution × reasonable rate × years)

Community Property = Current Value – SP Interest

Best used when: Active management or skill primarily grew the account.

The Van Camp Formula

Named for *Van Camp v. Van Camp* (1921), this formula applies when the **nature of the separate property itself** — passive market appreciation — drove the growth. The community is reimbursed a reasonable value for any labor contributed, and the remainder belongs to the separate property spouse.

Van Camp Formula:

Community Interest = Reasonable compensation for labor × years

Separate Property = Current Value – Community Interest

Best used when: Market forces, not active effort, grew the account.

Which Formula Applies to Your Case?

Courts have discretion in choosing which formula to apply, and the choice can make an enormous financial difference.

- If the account grew due to **active management or skill** → courts tend to apply **Pereira** (more value to community).
- If the account grew due to **passive market forces** → courts tend to apply **Van Camp** (more preserved as SP).

The choice of formula is often one of the most contested issues in cases involving premarital investment accounts, and expert financial testimony (typically from a forensic accountant) is frequently required.

A Worked Example

The Situation: Before marriage, David invested **\$100,000** (separate property) in a stock portfolio. Over 10 years of marriage, the account grew to **\$320,000** — primarily through passive market appreciation. No additional funds were contributed; the community did not actively manage the account.

Applying Van Camp (passive growth scenario):

Community compensation (estimated): \$25,000 for 10 years of oversight (hypothetical)

Community interest: **\$25,000** (each spouse receives \$12,500)

David's separate property interest: **\$295,000** (\$320,000 – \$25,000)

Note: Under Pereira, the result would be dramatically different — demonstrating why the choice of formula is one of the most important strategic questions in cases involving premarital investment accounts.

Tracing: Protecting Your Separate Property Claim

Even when the law entitles you to a separate property reimbursement or a proportionate share of an asset, you can only recover it if you can **prove it**. The process of following money back to its separate property source is called **tracing** — and it is the foundation of every successful separate property claim.

Documents You Will Need

- **Bank & account statements:** Pre-marital and marital records showing the source of funds and all transfers.
- **Deed and closing documents:** Escrow statements and closing disclosures showing exactly how the purchase was funded.
- **Mortgage statements:** Records showing which account each payment came from and when.
- **Gift letters / Inheritance records:** Trust distributions, estate checks, or gift letters documenting the source of funds.
- **Investment account statements:** Monthly or annual statements showing account values, contributions, and withdrawals over time.
- **Tax returns:** Joint and individual returns that may reflect asset ownership or income sources.

Without documentation, courts presume community property. If you commingled separate funds in a joint account and cannot trace their origin, California courts will treat the *entire* account as community property — regardless of your original intent or the true history of those funds.

Frequently Asked Questions



What if I can't find all my old financial records?

A forensic accountant can often reconstruct records through tax returns and bank archives. Most banks retain records for at least 7 years. Start early — the older the records needed, the harder they become to obtain.



What if my spouse disputes my separate property claim?

This is common, and these disputes often require expert testimony. An attorney can help you gather evidence, retain a forensic accountant, and present your claim at trial or in settlement. Courts decide based on the weight of evidence.



Can a prenuptial agreement protect my separate property?

Yes. A well-drafted prenuptial (or postnuptial) agreement can clearly define what remains separate, protect premarital assets, and eliminate the need for tracing entirely. If you're entering a marriage with significant assets, a prenup is one of the most powerful protections available.



Does it matter whose name is on the deed or account?

In California, title alone does not determine whether property is community or separate. The source of funds matters more than whose name is on a document. However, title can create a presumption that may require evidence to overcome.



Is this the same as a 'reimbursement' under Family Code § 2640?

Related, but different. FC § 2640 provides reimbursement for separate property contributions to a community residence. Moore/Marsden goes further — it awards a proportionate share of appreciation, not just the original contribution amount. An attorney can determine which theory applies to your situation.

Closing Thoughts

But like any legal tool, they only work when applied correctly.

Don't leave money on the table because you didn't know you had a right to reimbursement for your separate property.

Ready to Protect What's Yours?

Schedule a confidential consultation with Mock Law, APC.
We help California clients navigate complex property issues in divorce.

Schedule a Consultation

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