

- SUBJECT:** Agreements to convert separate property to community property
- COMMITTEE:** Juvenile Justice and Family Issues — favorable, without amendment
- VOTE:** 8 ayes — Goodman, Isett, P. King, Morrison, Naishtat, A. Reyna, E. Reyna, Truitt
- 0 nays
- 1 absent — Pickett
- WITNESSES:** For — Bernard Jones and Jerry Jones, Texas Academy of Probate Attorneys
- Against — William Dudley; Stewart Gagnon, Family Law Section of Texas State Bar; Victor Negron, Jr., Family Law Section and Texas Family Law Council; Jennifer Tull
- On — John Sampson
- BACKGROUND:** Under Art. 16, sec. 15 of the Texas Constitution, community property in marriage may be recharacterized as separate property provided that both spouses agree. Separate property includes property owned by a spouse before the marriage or acquired by the spouse by gift or inheritance. Money damages recovered from a personal injury case also are separate property. Community property generally is any property acquired during the marriage. If property is purchased during the marriage with funds coming from separate property, the purchased property is separate property.
- Current law does not allow the conversion of separate property to community property. For example, if one spouse receives an inheritance of land in the name of both spouses, the ownership of that inheritance is split, with each spouse owning an undivided interest in the land as separate property.
- Texas allows prenuptial agreements that are made in writing and signed by both spouses. Such agreements may involve property rights.

DIGEST: HJR 36 would propose amending Art. 16, sec. 15 of the Texas Constitution to allow spouses to agree in writing that all or part of the separate property owned by either or both spouses would become the spouses' community property.

The proposal would be presented to voters at an election on November 2, 1999. The ballot proposition would read: "The constitutional amendment permitting spouses to agree to convert separate property to community property."

SUPPORTERS SAY: HJR 36 would allow spouses to agree in writing on whether and how to convert separate property to community property. It would authorize enactment of HB 734, passed by the House on April 27, which would prescribe procedures for implementing conversion of separate property to community property.

This proposed constitutional amendment would authorize the conversion of separate property to community property just as community property may be converted to separate property. This reciprocity would give Texas spouses more freedom in disposing of their separate property. Greater freedom of contract is part of a growing trend in Texas.

Texas already allows prenuptial agreements that provide for conversion of certain community property to separate property. HJR 36 would accommodate the desires of some spouses to go the other way and convert separate property into community property. Although optional, the boilerplate language specified by HB 734, the implementing bill, would create a rebuttable presumption that each spouse received fair and reasonable disclosure of the agreement's legal effects. This provision would be similar to that found in prenuptial agreements.

HJR 36 also would provide tax benefits for spouses. When a separate property asset is converted to community property, there may be a "step up" in the basis of the converted property without any tax consequences. For example, if a spouse converted to community property a separately owned house that was worth \$50,000 when purchased and if the property was worth \$100,000 upon the death of that spouse, the \$50,000 increase in the house's value would not be taxed upon sale.

HJR 36 would enable Texans to decide directly by referendum whether HB 734 should take effect.

**OPPONENTS
SAY:**

The conversion of separate property to community property could lead to unintended consequences. While in a happy marriage, a spouse may convert separate property to community property only to regret that decision when the marriage turns sour. Upon divorce, what formerly belonged to that spouse could be divided in half.

Under HJR 36, a spouse could convert his or her property without full knowledge of the legal effects of such a conversion. Prenuptial agreements that provide for property conversion are required to provide full disclosure of the legal effects to both spouses. While HB 734, the implementing bill for HJR 36, does prescribe a legal-effects disclosure clause that could be included in a written agreement to convert the separate property to community property, but the clause would be optional.

The principle that underlies community property — part of a longstanding tradition in the Texas Constitution — is that this property be “built up” by both spouses during the marriage. A spouse should be able to share only what is earned during marriage and should be protected from having his or her separate property converted.

NOTES:

HB 734 by Goodman, the implementing legislation for HJR 36, passed the House on April 27.