

Reimbursement Claims – 2026

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Executive Summary – Reimbursement Claims in the Real World¹

The Texas Legislature in 2023 rewrote the law on reimbursement claims, so beware of any articles and many appellate cases that pre-date the new law.

Reimbursement claims are not easy to win if the law is followed. It is totally up to the judge to decide if a reimbursement claim should be granted based on the statute and principles of equity.

The two most common scenarios where reimbursement is sought involve: (1) use of community property funds to pay a loan secured by a separate property, such as the mortgage on a separate property house, or (2) use of community funds to improve a separate property asset, such as using community property funds to remodel a separate property house. Either claim requires the attorney to convince the judge that unjust enrichment of the separate estate will occur if the separate estate is not required to reimburse the community estate.

A reimbursement claim based on the community paying a debt that benefits a separate estate also requires proof that the debt in equity and good conscience should have been paid from separate property funds. Sec. 3.402(c)(1). As a practical matter, this would seem to require proof that there were separate property funds or property available to pay the debt. This requirement is not set forth in the statute, but how else could the judge find that the debt should have been paid using separate funds if there were no separate funds available?

In the situation where community funds were used to improve a separate property asset, the lawyer must also provide evidence of how much the value of the separate property was enhanced by the improvement. That is not always easy to do and often is just not possible.

Many lawyers overlook reimbursement claims for the payment of expenses that benefit another estate. The measure of recovery in such claims is the amount spent.

A trial court that grants a claim for reimbursement could:

1. Consider the reimbursement claim in the division of community property if there is enough community property;
2. Grant a judgment in favor of one spouse against the other spouse; and/or
3. Grant an equitable lien against the separate property that was benefited and was the subject of the reimbursement claim, which would involve awarding one spouse a judgment and ordering the other spouse to sign a real estate lien note and deed of trust in that amount secured by a lien on one of the spouse's properties that was the subject of the reimbursement claim. An equitable lien probably cannot be placed against a homestead but can be granted against other real estate that was benefited.

¹ Updated through April 2026.

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Reimbursement Claims – Summary Chart

Spouse asserting a reimbursement claim must prove per Sec. 3.402(b):

(1) that the spouse or both spouses used property of the marital estate to confer a benefit on the property of another marital estate; (2) the value of the benefit; and (3) that unjust enrichment of the benefited estate will occur if the benefited estate is not required to reimburse the conferring estate.

Type of Claim	Elements of Proof
Community Property Used to Pay Debt or Liability That Should Have Been Paid With Separate Property	<ol style="list-style-type: none"> 1. Payment of the debt benefited² the separate property of a spouse; 2. The amount of the debt that was paid using community funds; 3. There were separate property funds or property available to pay the debt (implied by statute); 4. The debt in equity and good conscience should have been paid from separate property. 5. Unjust enrichment of the separate estate will occur if the separate estate is not required to reimburse the community estate. <p>Measure of Recovery: Amount of community funds used to pay debt or liability.</p>
Separate Property Used to Pay Debt or Liability That Should Have Been Paid With Community Property	<ol style="list-style-type: none"> 1. The community estate benefited from this payment. 2. The spouse asserting this claim must prove "...by clear and convincing evidence that the funds expended on behalf of the community estate were separate funds." This will likely require tracing and often an expert witness. 3. The amount of the debt that was paid using separate funds. 4. The debt in equity and good conscience should have been paid from community property. 5. There were community property funds that could have been used to pay the mortgage payments (implied by statute). 6. Unjust enrichment of the community estate will occur if the community estate is not required to reimburse the wife's separate estate. <p>Measure of Recovery: Amount of separate funds used to pay debt or liability.</p>
Community Property Used for Payment of Expenses That Should Have Been Paid with Separate Property	<ol style="list-style-type: none"> 1. Payment of the expense benefited the separate property of a spouse. 2. The amount of the expense that was paid using community funds. 3. There were separate property funds or property that could have been used to pay the expense (implied by statute). 4. The expense in equity and good conscience should have been paid from separate property. 5. Unjust enrichment of the separate estate will occur if the separate estate is not required to reimburse the community estate. <p>Measure of Recovery: Amount of community funds used to pay expense.</p>
Separate Property Used for Payment of Expenses That Should Have Been Paid with Community Property	<ol style="list-style-type: none"> 1. Payment of the expense benefited the community estate. 2. The spouse asserting this claim must prove "...by clear and convincing evidence that the funds expended on behalf of the community estate were separate funds." This will likely require tracing and often an expert witness. 3. The amount of the expense that was paid using separate funds. 4. There were community property funds or property that could have been used to pay the expense (implied by statute). 5. The expense in equity and good conscience should have been paid from community property. 6. Unjust enrichment of the community estate will occur if the community estate is not required to reimburse the spouse's separate estate. <p>Measure of Recovery: Amount of separate funds used to pay expense.</p>

² Both "benefited" and "benefitted" are correct spellings, but the preferred version depends on the dialect of English. Benefited with one "t" is American English and benefitted with two "t"s is British English.

Community Funds Used to Pay for Improvements on Separate Property	<ol style="list-style-type: none"> 1. Community funds were used to pay for the improvements. 2. Payment for the improvement benefited the separate property of a spouse. 3. The amount that the improvement enhanced the value in the separate property. 4. Unjust enrichment of the separate estate will occur if the separate estate is not required to reimburse the community estate. <p>Measure of Recovery: The difference between the fair market value of the property with improvements at the time of dissolution compared with what the fair market value of the property at the time of dissolution would be if the improvements had not been.</p>
Separate Funds Used to Pay for Improvements on Community Property	<ol style="list-style-type: none"> 1. Separate funds were used to pay for the improvements. The spouse asserting this claim must prove "...by clear and convincing evidence that the funds expended on behalf of the community estate were separate funds." This will likely require tracing and often an expert witness. 2. Payment for the improvement benefited the community estate. 3. The amount that the improvement enhanced the value in the community property. 4. Unjust enrichment of the community estate will occur if the community estate is not required to reimburse the separate estate. <p>Measure of Recovery: The difference between the fair market value of the property with improvements at the time of dissolution compared with what the fair market value of the property at the time of dissolution would be if the improvements had not been made.</p>
Spouse Used Time, Toil, Talent or Effort to Enhance Value of Separate Property	<ol style="list-style-type: none"> 1. The spouse used time, toil, talent or effort to enhance the value of the separate property business beyond that which was necessary to manage and preserve the wife's separate property medical practice. 2. The community estate did not receive adequate compensation for the husband's work. 3. The value of the time, toil, talent, or effort beyond that which was reasonably necessary to manage and preserve the spouse's separate property. 4. The spouse in equity and good conscience should have been paid more. 5. Unjust enrichment of the separate estate will occur if the separate estate is not required to reimburse the community estate. <p>Measure of Recovery: The value of the time, toil, talent, or effort beyond that which was reasonably necessary to manage and preserve the spouse's separate property.</p>

Remedies for Reimbursement Claims: The trial court can:

1. Consider the reimbursement claim in the division of community property if there is enough community property. If the claim is owed to the community, list the claim as an asset on the property spreadsheet and award it to spouse whose property benefited. If the claim is owed to a separate estate, list the amount as a community debt and put it into the column of the spouse whose separate estate is owed.
2. Grant a judgment in favor of one spouse against the other spouse. AND / OR
3. Grant an equitable lien against the separate property that was benefited (but not if it is a homestead) and was the subject of the reimbursement claim. In addition to the judgement, this would involve an order to sign a note and deed of trust. Only the separate property benefited can be the subject of the equitable lien.

Sec. 3.409. NONREIMBURSABLE CLAIMS. The court may not recognize a marital estate's claim for reimbursement for:

- (1) the payment of child support, alimony, or spousal maintenance;
- (2) the living expenses of a spouse or child of a spouse;
- (3) contributions of property of a nominal value;
- (4) the payment of a liability of a nominal amount; or
- (5) a student loan owed by a spouse.

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2023 Change in the Law on Reimbursement

The Texas Legislature in 2023 totally re-wrote the law on reimbursement in divorce cases. Appendix A is the current reimbursement statute. Appendix B at the end of this article is the text of House Bill 1547 which went into effect on September 1, 2023 and applied to all pending cases and cases filed after that date. Any appellate cases or seminar articles on the subject of reimbursement written prior to this new legislation should be considered suspect and reviewed carefully in light of the new law.³ Even some articles written after 2023 on the subject of reimbursement might not be correct. The 2024 Advanced Family Law Seminar article on reimbursement is mostly a repeat of a 2022 article and it does not address the new law and mostly is not applicable now – do not rely on it.

The 2023 revisions of the reimbursement claim section of the Texas Family Code apply to a claim for reimbursement pending on September 1, 2023, not just cases filed after that date. The 2023 law that amended the reimbursement statute says that it took effect on September 1, 2023 and “[t]he change in law made by this Act applies to a claim for reimbursement that is pending in a trial court on the effective date of this Act or that is filed on or after that date.” H.B. 1537 (R.S. 2023) sections 6 and 7.

A June 2025 opinion from the Dallas Court of Appeals held that the new statute applied even to a case that went to trial before the effective date. *In re T.E.R.*, 05-24-00014-CV (Tex. App. – Dallas 6/26/2025)(mem. op.) involved a divorce case filed in March 2022, a trial in March 2023 and entry of the final decree in December 2023.

Footnote 7 of this opinion says:

We cite to the current version of the “Claims for Reimbursement” subchapter of the family code, which became effective September 1, 2023, because the final decree of divorce was not entered in this case until December 20, 2023, and thus, Wife’s reimbursement claim is governed by the current statutory language. See Act of May 17, 2023, 88th Leg., R.S., ch. 411, § 6, 2023 Tex. Gen. Laws 1003, 1005 (H.B. 1547) (“The change in law made by this Act applies to a claim for reimbursement that is pending in a trial court on the effective date of this Act or that is filed on or after that date.”).

Note, that the law says to “a claim for reimbursement pending in a trial court” and not to a divorce case pending on that date. So, if a divorce was filed but the reimbursement claim was not added until after September 1, 2023, presumably the prior version of the reimbursement statute would apply.

The 2023 law on reimbursement was passed by the Texas Legislature after all and so it includes historically archaic language as if *Obergefell v. Hodges*, 576 U.S. 644 (2015) was not (for now at least) the law of the land.

³ An excellent but old article on reimbursement that is still very much worth reading is Geary & Wingate, “Reimbursement – Statutory and Common Law Recoveries” *Texas Bar Family Law Section Report*, Vol. 2012-4 (Fall).

Section 3.401 says:

(5) "Spouse" means a husband, who is a man, or a wife, who is a woman. A member of a civil union or similar relationship entered into in another state between persons of the same sex is not a spouse.

A lawyer in a divorce involving spouses of the same gender could argue that a reimbursement claim is not possible given the definition of "spouse" quoted above, but most judges would extend *Obergefell v. Hodges* to allow such a claim.

What a Reimbursement Claim Is and Is Not

Texas divorces involve typically three groups of property, called "estates": the community estate owned by both spouses, and each spouse's separate estate. In a divorce, for example, the husband might have real estate, money in accounts, or vehicles which he owned prior to marriage, inherited or received as a gift and this would be considered his separate estate.

Texas Family Code Sec. 3.402(a) defines a reimbursement claim:

Sec. 3.402. CLAIM FOR REIMBURSEMENT; OFFSETS.

(a) A claim for reimbursement exists when one or both spouses use property of one marital estate to confer on the property of another marital estate a benefit which, if not repaid, would result in unjust enrichment to the benefited estate.

A reimbursement claim could arise when, for example, community property funds from a joint, marital bank account are used to replace the roof on the wife's separate property rent house which she owned before the marriage. In that situation, the wife's separate estate is benefited from the use of community property funds.

Most reimbursement claims made in Texas divorce involve claims that community property funds were used to benefit a spouse's separate property as in the example above. However, a reimbursement claim can be made for a spouse's separate property estate. For example, if the husband sells his separate property stamp collection and uses the proceeds to remodel the master bathroom on the community property house, the husband could make a reimbursement claim in favor of his separate estate.

Section 3.402(c) provides further explanation of what a reimbursement claim is:

(c) For purposes of this subchapter, the property of a marital estate confers a benefit on another marital estate's property if:

(1) one or both spouses used property of the conferring estate to pay a debt, liability, or expense that in equity and good conscience should have been paid from the benefited estate's property;

(2) one or both spouses used property of the conferring estate to make improvements on the benefited estate's real property, and the improvements resulted in an enhancement in the value of the benefited estate's real property; or

- (3) one or both spouses used time, toil, talent, or effort to enhance the value of property of a spouse's separate estate beyond that which was reasonably necessary to manage and preserve the spouse's separate property, and for which the community marital estate did not receive adequate compensation.

Section 3.409 of the Texas Family Code sets forth what is not a reimbursement claim:

Sec. 3.409. NONREIMBURSABLE CLAIMS. The court may not recognize a marital estate's claim for reimbursement for:

- (1) the payment of child support, alimony, or spousal maintenance;
- (2) the living expenses of a spouse or child of a spouse;
- (3) contributions of property of a nominal value;
- (4) the payment of a liability of a nominal amount; or
- (5) a student loan owed by a spouse.

Ponzio v. Ponzio, No. 03-23-00336-CV (Tex. App. – Austin 6/27/2025)(mem. op.) is a June 2025 decision from the Austin Court of Appeals that interpreted the older reimbursement statute that was totally overhauled in 2023. However, this case's ruling that the wife was not entitled to reimbursement for the labor and expenditures made by her parents to fix up the husband's separate property house for sale is still probably good law. The court there stated:

The labor expended by Alexis's parents on Thomas's separate property is a benefit that Alexis's parents conferred on Thomas's separate estate, not a benefit that the community estate conferred on Thomas's separate estate. Thus, we conclude that the trial court abused its discretion by considering evidence of the time, toil, and effort expended by Alexis's parents to make improvements to the Running Brush House as support for Alexis's reimbursement claim.

Common Law Reimbursement Claims

Several courts have held that the list of reimbursement claims set forth in Sec. 3.402 is not exhaustive and that common law reimbursement claims are still allowed unless the statute specifically makes it non-reimbursable. See e.g. *Taylor v. Taylor*, No. 05-24-00544-CV (Tex. App. – Dallas 12/2/2025, no pet.)(mem. op.). The court in *McCartney v. McCartney* 720 S.W.3d 789, 798 (Tex. App.-Houston [14th Dist.] Aug. 5, 2025, no pet.) said:

Family Code section 3.402 codified many reimbursement claims existing at common law. See Tex. Fam. Code § 3.402(a). The Legislature has not codified all common-law grounds for reimbursement, but the statute should not be read as the exclusive list of reimbursable claims. See *Nelson v. Nelson*, 193 S.W.3d 624, 632 (Tex. App.—Eastland 2006, no pet.). Therefore, a claim for reimbursement recognized at common law is generally still viable as long as it is not specifically classified as non-reimbursable under the current reimbursement statutory scheme. See Tex. Fam. Code § 3.409 (listing non-reimbursable

claims). This interpretation is consistent with the equitable nature of reimbursement claims and the mandate that the trial court balance all the facts, circumstances, and equities of the particular matter before it. *See id.* § 3.402(b)4; *Penick*, 783 S.W.2d at 197.

Nelson v. Nelson, 193 S.W.3d 624, 632-33 (Tex. App.—Eastland 2006, no pet.) is an example of a claim for reimbursement not listed in the statute. There, the wife prior to marriage, used her own funds from the sale of her house for materials used to buy a house on land owned by her future husband. The parties were married about the time the house was finished and at the later divorce trial, the wife was granted a reimbursement claim, even though her type of claim was not one listed in the economic contribution statute in effect at the time.

In *Horlock v. Horlock*, 533 S.W.2d 52 (Tex. Civ. App. – Houston [14th Dist.] 1976, writ dismissed w.o.j.), the husband owned separate property stock in a corporation and as part of a merger contributed \$100,000 of community funds to the capital of the corporation. The Houston Fourteenth Court of Appeals held that the community estate was entitled to reimbursement. This is an equitable reimbursement claim not described in the current reimbursement statute and would probably still constitute a valid claim.

The Burden of Proof

Section 3.402 states:

- (b) A spouse seeking reimbursement to a marital estate must prove:
 - (1) that the spouse or both spouses used property of the marital estate to confer a benefit on the property of another marital estate;
 - (2) the value of the benefit described by Subdivision (1); and
 - (3) that unjust enrichment of the benefited estate will occur if the benefited estate is not required to reimburse the conferring estate.

The usual “preponderance of the evidence” standard of proof would apply to a reimbursement claim in favor of the community estate. However, “a spouse making a claim for reimbursement on behalf of a separate estate must prove by clear and convincing evidence that the funds expended on behalf of the community estate were separate funds.” *Hinton v. Burns*, 433 S.W.3d 189, 196 (Tex. App. – Dallas 2014, no pet.).

As noted above, one has to be cautious about applying pre-2023 appellate cases to reimbursement claims because of the total overhaul of the reimbursement statute in 2023. However, one case that would seem to still be good law is *McCann v. McCann*, 22 S.W.3d 21 (Tex. App. – Houston [14th Dist.] 2000, pet. denied), which described the burdens of proof and presumptions applicable to a reimbursement claim allegedly owed to the community estate:

Under Texas law, the community estate is entitled to reimbursement for community property funds used to enhance the separate property of one of the spouses, and is to be measured by the enhanced value to the benefited estate.The party claiming the right of

reimbursement has the burden of proof. However, if these improvements were made during the marriage, there is a presumption that the funds expended on such improvements came from community property funds. TEX. FAM. CODE ANN. 3.003(b). If this presumption is not rebutted by the party opposing the claim for reimbursement, all expenditures will be presumed community expenditures.

McCann at 23 (case citations omitted).

The judge has broad discretion in deciding whether to grant a claim for reimbursement and that discretion is as broad as the discretion used to divide the community estate. *Penick v. Penick*, 783 S.W.2d 194, 198 (Tex. 1988). So, even if the elements of a reimbursement claim are proven, it is still up to the judge whether to actually grant the claim. The real burden is to prove that it would be unfair and inequitable not to award the reimbursement claim.

Knowledge or Consent – Does It Matter?

There are currently no appellate cases arising from divorce cases which make it clear whether or not lack of consent matters in a reimbursement claim. The new 2023 statute on reimbursement claim does not list lack of consent or knowledge as an element of the claim.

For example, if a wife uses her inherited, separate property funds to add a paved road to a community property ranch, does it matter if the husband did not know where the money for the road came from? Does it matter that the wife willingly used her separate property funds?

The wording of the new reimbursement statute implies that both spouses knowing and consenting to payments that could result in a reimbursement claim does not defeat the claim. Sec. 3.402(a) says, “A claim for reimbursement exists when one or both spouses use property of one marital estate to confer on the property of another marital estate a benefit which, if not repaid, would result in unjust enrichment to the benefited estate.” If both spouses remodel the husband’s separate property beach house using community funds, the statute clearly says a claim is allowed as long as other requirements are proven. So, that would make it seem that knowledge or consent does not bar a claim for reimbursement.

There are dozens of Texas appellate cases involving partition of real property which involve equitable claims for reimbursement for expenditures made to benefit jointly owned property. Such a claim would be analogous to a reimbursement claim for a spouse’s separate estate for payments that benefited the jointly owned community estate. Perhaps those partition cases may shed light on whether knowledge or consent matter in reimbursement claims brought in divorce cases. In partition cases, reimbursement can be recovered when one co-owner improves jointly owned property with the consent of the other co-owners. *Cox v. Davison*, 397 S.W.2d 200, 201 (Tex. 1965); *Bailey-Mason v. Mason*, 334 S.W.3d 39, 44-46 (Tex. App. – Dallas 2008, pet. denied). But, partition cases hold that a cotenant who expends funds necessary to preserve the common estate are entitled to reimbursement and consent does not seem to matter. *McGehee v. Campbell*, No. 01-08-1023CV (Tex. App. – Houston [1st Dist.] March 25, 2010, no pet.). Expenditures necessary to preserve the common property include those for taxes, insurance, and repairs. *Duke v. Squibb*, 392 S.W.2d 885, 888 (Tex. Civ. App.-Texarkana 1965, no writ).

Waste claims might be another similar claim that could shed light on whether consent or knowledge matter in a reimbursement claim. To prove the presumption of constructive fraud, there is no

requirement that the transfer, gift, or disposition was secret. The presumption may arise even when the other spouse has knowledge of the disposition, so long as he or she did not consent. *Everitt v. Everitt*, No. 01-11-00031-CV (Tex. App. - Houston [1st Dist.] 8/31/2012, no pet.)(mem. op.)(citing *Zieba v. Martin*, 928 S.W.2d 782, 790 (Tex. App. - Houston [14th Dist.] 1996, no writ).

A judge deciding whether to grant a reimbursement based on equity and fairness surely could consider whether or not the transaction was kept secret or known to the other spouse. How could it be unjust enrichment if both spouses agreed to the payments?

Pleadings Required

Pleadings seeking a claim for reimbursement are required to support a judgment for reimbursement. *Trevino v. Garza*, No. 13-15-00241-Cv (Tex. App. – Corpus Christi, March 17, 2016, no pet.)(mem. op.). "The party claiming the right of reimbursement has the burden of pleading and proving that the expenditures and improvements were made and that they are reimbursable." *Rodriguez v. Cortez*, No. 02-23-00004-CV (Tex. App. – Fort Worth, July 27, 2023)(mem. op.) quoting *Vallone v. Vallone*, 644 S.W.2d 455, 459 (Tex. 1982).

If pleadings are required to present a reimbursement claim at trial, then it follows that the legal theories and facts set forth in disclosures under Texas Family Code Chapter 301 also need to address the reimbursement claim.

What a Jury Can Decide

A jury can decide the factual issues that underly a reimbursement claim (was community property used to benefit wife's separate property rent house?), but the judge decides if a reimbursement claim should be granted and what form of relief is appropriate.

The Texas Supreme Court in *Wagner & Brown, Ltd. v. Sheppard*, 282 S.W.3d 419, 428-29 (Tex. 2008) stated,"[a]s with other equitable actions, a jury may have to settle disputed issues about what happened, but "the expediency, necessity, or propriety of equitable relief" is for the trial court" A jury's findings on issues of fact are binding; however, equitable principles and the appropriate relief to be afforded by equity are only to be applied by the court itself. *Shields v. State*, 27 S.W.3d 267, 272 (Tex. App.—Austin 2000, no pet.).

The recent case of *Leeson v Lesson*, No. 13-23-00158-CV (Tex. App. – Corpus Christi-Edinburg 2/20/2025)(mem. op.) seems to say that a jury does not get to decide whether a reimbursement claim should be granted but may decide factual issues on which a reimbursement claim could be based upon. For example, a jury could decide the specific question of whether community funds were used to improve a separate property house and the amount of enhancement of value attributable to that expenditure, but only the trial judge can decide whether to award the reimbursement claim.

The 2024 Texas Family Pattern Jury Charge Sec. 204.1 suggests jury instructions and questions if Estate A conferred a benefit on Estate B, the value of the benefit conferred and whether there were offsetting benefits. **See Appendix C for the current Pattern Jury Charge on reimbursement.**

Offsetting Claims

A wife who uses community funds to put in a new engine and transmission into a her separate property tow truck might prompt her husband to assert a reimbursement claim for the community estate. But, if the wife can show that her tow truck was used by the community property business, she could assert an offsetting claim to reduce or cancel out the reimbursement claim. The wife could show “the value of the use and enjoyment” of the tow truck by showing how much revenue it brought in or perhaps what it would have cost the business to buy its own tow truck. Offsetting claims are basically a defense to a reimbursement claim or a way to reduce the amount of a reimbursement claim.

Section 3.402 states:

(g) A claim for reimbursement of a marital estate by one spouse may be offset by the value of any related benefit that the other spouse proves that the conferring estate received from the benefited estate, including:

(1) the value of the use and enjoyment of the property by the conferring estate, except that the separate marital estate of a spouse may not claim an offset for use and enjoyment of a primary or secondary residence owned wholly or partly by the separate marital estate against contributions made by the community marital estate to the separate marital estate;

(2) income received by the conferring estate from the property of the benefited estate; or

(3) any reduction in the amount of any income tax obligation of the conferring estate by virtue of the conferring estate claiming tax-deductible items relating to the property of the benefited estate, such as depreciation, interest, taxes, maintenance, or other deductible payments.

(h) The party seeking an offset to a claim for reimbursement has the burden of proof with respect to the offset.

Pre-Marital and Marital Property Agreements and Reimbursement Claims

Section 3.410 says that a premarital or marital property agreement can waive a reimbursement claim.

Decisions from the two Houston Courts of Appeals in 2025 both say that reimbursement claims are waived by a premarital agreement only if the agreement specifically references reimbursement claims. *McCartney v. McCartney*, 14-24-00310-CV (Tex. App. – Houston [14th Dist.] 8/5/2025)(mem. op.); *Jimenez v. Jimenez*, 01-23-00087-CV (Tex. App. – Houston [1st Dist.] 4/22/2025)(mem. op.).

This is an example of language in a marital property agreement that was held to waive reimbursement claims:

Any payment or contribution by one of us to satisfy the debts or otherwise benefit the separate estate of the other shall not give rise to a claim for reimbursement or an interest in any property purchased by those payments unless we otherwise agree in writing. Any right of reimbursement that may arise during our marriage for payments or contributions made to the other's separate estate to the extent any payment is made by one for the benefit of the other shall be presumed to be a gift to the other party's separate estate.

Stoker v. Stoker, No. 01-07-00056-CV (Tex. App.- Houston [1st Dist.] Nov. 6, 2008, no pet.) (mem. op.).

Payment of Debts

A. Community Property Used to Pay Debt That Should Have Been Paid With Separate Property

The most common grounds for a reimbursement claim in a Texas divorce arises from community property being used to pay a debt that benefits a spouse's separate estate. The spouse asserting this reimbursement claim would need to prove that community funds were used, "to pay a debt...that in equity and good conscience should have been paid from [separate] property." Sec. 3.402(b) would also require proof of the value of the benefit conferred (presumably the amount paid on the debt) and proof that unjust enrichment of the separate estate will occur if the separate estate is not required to reimburse the community estate. Sec. 3.402(b)(2) and (3).

Note, the requirement is not to just prove that a "separate property debt" was paid using community funds and the amount of the payments. Some commentators have written that there is no such thing as a "separate debt."⁴ Instead, the burden of proof is to show that payment of the debt "in equity and conscience should have been paid from [separate] property" and that failure to grant the reimbursement claim would result in unjust enrichment. The reimbursement statute does not say what proof is needed to show this, however. The only standard provided is "equity and good conscience" and the avoidance of "unjust enrichment."

The difficulties and uncertainties involved in actually winning this type of reimbursement claim are shown in these common situations:

- Community funds were used to pay the mortgage on a spouse's separate property house that the family lived in during the marriage. An offset of benefits is not allowed per Sec. 3.402(g)(1), but can the judge consider the fact that the family lived in the house in deciding if "in equity and good conscience" the mortgage should have been paid using separate funds? What if there are no separate funds available to use to pay the mortgage? What if it is clear that both spouses agreed and knew their earnings during marriage were being used to pay the mortgage on the separate property house they lived in? Had the family not

⁴ "Simply put, there is no such thing as community or separate debt....The foregoing distinctions may not seem important to you at first blush, but it has big implications when discussing a spouse's claim seeking reimbursement for one estate's expenditure of funds to pay a debt, liability, or expense. This is so because people often say one estate paid another estate's debt or liability. But this statement is not true. Estate or not entities. They do not own property, nor do they owe debts or liabilities. People own property and they owe debts and liabilities. They also use property of various estate to pay debts and liabilities which then creates the right of reimbursement among marital estate." Thomson and Nickelson, "A Deep Dive: Statutory and Common Law Reimbursement," *Handling Your First (or Next) Divorce Case*, Nov. 3, 2023, page 8.

paid the mortgage on the separate property house, the couple would have had to buy another house or rent a residence, and spent as much or more than the mortgage. Doesn't that mean that payment of the mortgage using community funds actually did not harm the community estate? How does this scenario result in unjust enrichment if the reimbursement claim is not allowed? Full consideration of this situation makes this most common ground for claiming reimbursement actually difficult to win.

- An inherited house with a mortgage is used as a rent house during the marriage and the rental income (which is community property) is used to pay the mortgage on the separate property rent house. If the spouse who inherited the rental property also inherited a lot of cash, a judge might decide those separate funds should have been used to pay the mortgage on the separate property house. But, what if the rent house is all that the spouse inherited and there are no separate funds to pay the mortgage? Almost everyone who owns a rent house with a mortgage uses the rents to pay the loan, so how is this unjust enrichment, especially if the other spouse knew all about the payments?

The attorney presenting a reimbursement claim based on community property being used to pay a debt that benefits a spouse's separate estate would thus need to prove:

1. Payment of the debt benefited the separate property of a spouse (e.g. -reduced principal owed and thus increased the property's net value);
2. The amount of the debt that was paid using community funds. Sec. 3.402(d)(1) says, "...the value of the benefit conferred is measured by the amount of the debt, liability, or expense paid by the conferring estate." Does this "amount" include the principal of the mortgage and interest? If Angela pays my car loan payment for me for October, isn't the value of the benefit conferred to me the entire amount she paid for me? What if property taxes and insurance are escrowed and are part of the monthly mortgage payment? The statute says "the amount of the debt, liability, or expense" and surely interest and escrowed payments are part of the "liability or expense."
3. There were separate property funds or property available to pay the debt. This requirement is not set forth in the statute, but how else could the judge find that the debt should have been paid using separate funds if there were no separate funds available?
4. The debt in equity and good conscience should have been paid from separate property.
5. Unjust enrichment of the separate estate will occur if the separate estate is not required to reimburse the community estate.

In short, the proponent of such a reimbursement claim must prove the amount paid using community funds, prove that it was possible to have paid the debt using separate funds, and that it would be very unfair not to grant the reimbursement claim. How to prove that "equity and good conscience" require a reimbursement claim to be granted to avoid unjust enrichment will depend on the specific facts of the case, but the story needs to be pretty bad to convince the judge that fairness demands that the claim be granted.

B. Separate Property Used to Pay Debt That Should Have Been Paid With Community Property

Suppose that a wife uses her inheritance money to pay off the mortgage on the community property residence after her husband was fired from work for sexual misconduct and was then unable or unwilling to find other work. The spouse asserting this reimbursement claim would need to prove:

1. The community estate benefited from this payment.
2. The spouse asserting this claim must prove "...by clear and convincing evidence that the funds expended on behalf of the community estate were separate funds." *Day v. Day*, No. 04-23-00476-CV (Tex. App. – San Antonio, 6/20/2024)(mem. op.); *Hinton v. Burns*, 433 S.W.3d 189, 196 (Tex. App. – Dallas 2014, no pet.). This will likely require tracing and often an expert witness.
3. The amount of the debt that was paid using separate funds. Sec. 3.402(d)(1) says, "...the value of the benefit conferred is measured by the amount of the debt, liability, or expense paid by the conferring estate.
4. The debt in equity and good conscience should have been paid from community property.
5. There were community property funds that could have been used to pay the mortgage payments.
6. Unjust enrichment of the community estate will occur if the community estate is not required to reimburse the wife's separate estate.

Payment of Liabilities

The reimbursement statute also applies to "liabilities" Sec. 3.402(c) includes as grounds for reimbursement: "(1) one or both spouses used property of the conferring estate to pay a debt, liability, or expense that in equity and good conscience should have been paid from the benefited estate's property." The reimbursement statute does not define "liabilities" but the *Cambridge Dictionary* online defines of "liability" as meaning, "the amount of money that a person or organization owes." *Collins Dictionary* online has this definition – "A company's or organization's liabilities are the sums of money which it owes." It is frankly hard to see what difference there is between "debts" and "liabilities." A wife who was convicted of a crime and owes a fine has a liability. A spouse's separate property sole proprietor business that owes payroll taxes has a liability. Those are also debts, given that the *Collins Dictionary* online defines "debt" as "a sum of money that you owe someone."

The amount of a reimbursement claim for paying a liability that should have been paid by another estate is the amount paid. Sec. 3.402(d)(1) says, "...the value of the benefit conferred is measured by the amount of the debt, liability, or expense paid by the conferring estate."

The reimbursement statute says some liabilities, such as "payment of a liability of a nominal amount," living expenses of a spouse or child, a spouse's student loan, child support, spousal support, and alimony, cannot be the subject of a reimbursement claim. Sec. 3.409(1).

A. Community Property Used to Pay a Liability That Should Have Been Paid With Separate Property Funds

A lawyer seeking to prove a reimbursement claim for liabilities paid with community funds that should have been paid with a spouse's separate property (such as the DWI fine in the above example), would need to show:

1. The spouse's separate property estate benefited from these payments.
2. The amount of the liability that was paid using community funds.
2. There were separate property funds or property that could have been used to pay the liability. This requirement is not set forth in the statute, but how else could the judge find that the liability should have been paid using separate funds if there were no separate funds available?
3. The liability in equity and good conscience should have been paid from separate property.
4. Unjust enrichment of the separate estate will occur if the separate estate is not required to reimburse the community estate.

B. Separate Property Used to Pay a Liability That Should Have Been Paid With Community Property Funds

An attorney seeking to prove a reimbursement claim for liabilities paid with separate funds that should have been paid with the couple's community property (such as the payroll taxes incurred during marriage being paid with separate property funds), would need to show:

1. The community estate benefited from these payments.
2. The amount of the liability that was paid using separate funds. This requires clear and convincing evidence that separate funds were used and will usually require tracing and perhaps an expert witness.
3. There were community funds or property that could have been used to pay the liability. This requirement is not set forth in the statute, but how else could the judge find that the liability should have been paid using community funds if there were no community funds available?
4. The liability in equity and good conscience should have been paid from community property.
5. Unjust enrichment of the separate estate will occur if the community estate is not required to reimburse the spouse's separate estate.

Payment of Expenses

Attorneys should be aware that the reimbursement statute applies to “expenses” and not just loan payments or capital improvements. Sec. 3.402(c) includes as a basis for reimbursement: “(1) one or both spouses used property of the conferring estate to pay a debt, liability, or expense that in equity and good conscience should have been paid from the benefited estate's property.” The reimbursement statute does not define “expenses” but common dictionary definitions of “expenses” include:

- “an amount of money needed or used to do or buy something; cost.” *Cambridge Dictionary* online.
- “financial burden or outlay” *Merriam-Webster Dictionary* online.
- “an expenditure of money, time, labor, or resources to accomplish a result.” *Black’s Law Dictionary*.

The reimbursement statute says that “the living expenses of a spouse or child of a spouse” cannot be the subject of a reimbursement claim. Sec. 3.409(2). So, a spouse paying college expenses for an adult child from a prior marriage cannot be liable for a reimbursement claim for those college expenses. The statute says “a spouse” and not “spouse or ex-spouse.” So, if a wife is paying for the drug rehabilitation for her ex-husband, those payments could presumably be the subject of a reimbursement claim.

A wife who owns a separate property barrel racing horse prior to marriage will have to pay expenses for that horse during the marriage, such as feed, hay, boarding, and veterinary costs. A husband who inherits his father’s large fishing boat is certainly going to incur expenses, such as insurance, maintenance, registration, insurance, fuel, and repairs. All of those costs would be “expenses” that might be the subject of a reimbursement claim.

The amount of a reimbursement claim for paying expenses that should have been paid by another estate is the amount paid. Sec. 3.402(d)(1) says, “...the value of the benefit conferred is measured by the amount of the debt, liability, or expense paid by the conferring estate.” This is significant because it is often easy to prove the amount paid to repair the AC unit on a separate property house but almost impossible to prove how much fixing the AC unit enhanced the value of the property (see discussion above).

A. Community Property Used to Pay Expenses That Should Have Been Paid With Separate Property Funds

A lawyer seeking to prove a reimbursement claim for expenses paid with community funds to benefit a spouse’s separate property (such as the horse or boat in the above examples), would need to show:

1. Payment of the expense benefited the separate property of a spouse;
2. The amount of the expense that was paid using community funds;
3. There were separate property funds or property that could have been used to pay the expense (or the horse or boat should have just been sold). This requirement is

not set forth in the statute, but how else could the judge find that the expense should have been paid using separate funds if there were no separate funds available?

4. The expense in equity and good conscience should have been paid from separate property.
5. Unjust enrichment of the separate estate will occur if the separate estate is not required to reimburse the community estate.

B. Separate Property Used to Pay Expenses That Should Have Been Paid With Community Property Funds

An attorney seeking to prove a reimbursement claim for expenses paid with separate funds that should have been paid with the couple's community property (such as country club dues incurred during marriage being paid with separate property funds), would need to show:

1. The community estate benefited from these payments.
2. The amount of the expenses that was paid using separate funds. This requires clear and convincing evidence that separate funds were used and will usually require tracing and perhaps an expert witness.
3. There were community funds or property that could have been used to pay the expense. This requirement is not set forth in the statute, but how else could the judge find that the expenses should have been paid using community funds if there were no community funds available?
4. The expense in equity and good conscience should have been paid from community property.
5. Unjust enrichment of the separate estate will occur if the community estate is not required to reimburse the spouse's separate estate.

Reimbursement for Improvements

Sec. 3.402(d)(2) states:

(2) if the benefit resulted from the use of the conferring estate's property to make improvements on the benefited estate's real property, then the value of the benefit conferred is measured by the enhancement in the value of the benefited estate's real property that resulted from the improvements;

What is the difference between an “expense” and an “improvement?” One big difference is the proof needed to show the value of a reimbursement claim. For an “expense,” the amount of the reimbursement claim is the amount paid. For an “improvement,” the amount of the reimbursement claim is the enhancement of value. The reimbursement statute does not define “improvement.” *Blacks Law Dictionary* online defines “improvement” as, “A valuable addition made to property (usually real estate) or an amelioration in its condition, amounting to more than mere repairs or replacement of waste, costing labor or capital, and intended to enhance its value and utility or to adapt it for new or further purposes.”

So, adding a carport to a separate property house would be an improvement. Fixing a broken AC unit would be an expense. But, is total replacement of the roof an expense or an improvement? A new roof might enhance the value of the separate property house but after a hurricane, it is also a repair. After all, you are not adding a new roof that was not already there, you are replacing a damaged roof that leaks.

A. The Problem of Proving Enhancement of Value

Proving how much a kitchen renovation using community funds increased the value of a separate property house is not easy. Who would testify to the increase in value? Texas Real Estate Commission rules prohibit realtors from giving an opinion of value. Realtors can only provide an estimated sale price for the property. 25 Tex. Admin. Code Sec. 535.17.

Many licensed real estate appraisers would not stick their necks out and testify about how much value the kitchen renovation added to the value of the house in the above example. However, *In re Edwards*, No. 06-12-00016-Cv (Tex. App. – Texarkana 10/2/12)(mem. op.) is an example of a real estate appraiser testifying that 120 acres of separate property was worth \$325,000 before enhancements and \$502,960 after a house was added and other improvements were made.

An opinion from an appraiser or owner that the house in the above example would be worth \$25,000 less without the remodeled kitchen might be subject to an objection that the opinion is speculative or even a *Daubert* objection that the opinion is not reliable. After all, who really knows how much value the kitchen remodeling added to the house?

Texas allows the owner of a property to testify as to the property’s value. *Mata v. Mata*, 710 S.W.2d 745, 758 (Tex. App.— Corpus Christi 1986, no writ). The testimony of a spouse as to the pre- and post-improvement value of property is sufficient to sustain a finding as to the amount of the enhancement value. *Snider v. Snider*, 613 S.W.2d 8 (Tex. Civ. App. – Dallas 1981, no writ); *Smith v. Smith*, 715 S.W.2d 154, 157 (Tex. App.—Texarkana 1986, no writ).

However, the testimony of the property’s owner as to the enhancement of value must be substantiated by some evidence other than the owner’s mere opinion. *In re Marriage of McCoy & Els*, 488 S.W.3d 430, 435 (Tex. App. - Houston [14th Dist.] 2016, no pet.) involved the pre-

2023 reimbursement statute but its holding on evidence needed to support a finding of enhancement of value is surely still sound. There, the court stated:

However, there is no competent evidence of the value of the property without improvements at any time near the dissolution of the marriage. Wife testified that the “enhanced value” of the property was “162,” i.e., \$162,000. For this opinion on enhanced value, Wife performed a mathematic computation, subtracting the 1990 fair market value from the 2014 fair market value and concluding that the improvements “are what has increased the value today.” Even viewed in the light most favorable to Wife, Wife’s testimony does not yield a reasonable inference that the fair market value of the property in 2014 without the improvements was \$113,000. Even assuming Wife was qualified to testify about the enhanced value as a property owner, this valuation is conclusory and speculative. As we have explained recently:

An owner may not simply echo the phrase “fair market value” and state a number to substantiate the owner’s claim; the property owner must provide the factual basis on which the opinion rests. This burden is not onerous, particularly in light of the resources available today. But, the valuation must be substantiated; a naked assertion of “fair market value” is not sufficient. Even if unchallenged, the property owner’s testimony must support the verdict, and conclusory or speculative statements do not.

The Austin Court of Appeals recently clarified what must be proven to establish the amount of enhancement of value in a reimbursement case:

Generally, the value of the benefit conferred for improvements to real property is "measured by the enhancement in the value of the benefited estate's real property that resulted from the improvements." Tex. Fam. Code § 3.402(d)(2). Although Father introduced evidence about the costs of the various renovations to the San Marcos Residence, "evidence of the cost of improvements alone is not sufficient to prove enhanced value." *In re Marriage of McCoy & Els*, 488 S.W.3d 430, 435 (Tex. App.-Houston [14th Dist.] 2016, no pet.). Rather, that "enhancement value" is determined through evidence showing the fair market value of the property in its improved condition at the time of dissolution compared to the fair market value of the property if the improvements had not been made. *Marin*, 2023 WL 2776296, at *5. "Thus, it is not sufficient for the party seeking reimbursement to prove that the value of property has simply increased over time; the party seeking reimbursement must prove that the enhanced value of the property 'was actually due to the renovations' or other improvements." *In re Marriage of McCoy & Els*, 488 S.W.3d at 435 (quoting *Garza v. Garza*, 217 S.W.3d 538, 547 (Tex. App.- San Antonio 2006, no pet.)).

Vazquez v. Bailey, No. 03-22-00290-CV (Tex. App.-Austin, 4/25/2024)(mem. op.).

Another recent case held:

A claim for reimbursement for funds expended by an estate for improvements to another estate is to be measured by the enhancement in value to the benefited estate by reason of the improvements. The enhancement value is not determined by the actual costs expended by the community estate. To be reimbursable, a property's enhanced value must be "attributable to the community expenditures." "The enhanced value is determined by the difference between the fair market value before and after improvements made during the

marriage." Evidence of the property value without improvements and the value with improvements is sufficient to sustain a finding as to the amount of the enhancement value.

In re Baker, 627 S.W.3d 523 (Tex. App. - Waco 2021, no pet.)(citations and quotation marks omitted). *Baker* was a probate case that applied Family Code provisions on reimbursement. There, a real estate agent testified as to the value of the land alone and the value of the land with the improvements (a house, two outbuildings, barn and shop).

In re T.E.R., 05-24-00014-CV (Tex. App. – Dallas 6/26/2025)(mem. op.) involved a wife alleging reimbursement claims for her separate estate for the alleged use of her inherited funds to purchase and improve two different houses purchased during the marriage. The court of appeals reversed the the trial court’s reimbursement awards to Wife in the amounts of \$475,000; \$46,780.68; \$73,035; and \$46,642.75 because the wife failed to trace and prove her separate property funds had been used. The court of appeals also held that the wife failed to prove how much her alleged use of separate funds enhanced the values of the properties. The wife offered evidence of the value of the houses at the time of purchase and at the time of trial, but that was held to NOT be proof of how much the specific expenditures enhanced the value of the homes. The court stated:

Wife’s argument that the trial court could have considered the sale price of the Collinsville property minus the initial cost of the land to determine the increase in value is misplaced. The sale price might be evidence of the fair market value of the property with improvements at the time of the divorce proceeding but it is no evidence of what the fair market value of the land would be at that time without improvements. Wife simply failed to produce any evidence of the enhanced value of the property with improvements.

(citations omitted).

The court addressed the wife’s failure to prove enhancement of value in the other property as well:

Evidence of the cost of improvements alone, which is the \$73,035 Wife is seeking, is insufficient to prove enhanced value. See *In re Marriage of McCoy, Jr., and Els*, 488 S.W.3d 430, 435 (Tex. App.-Houston [14th Dist.] 2016, no pet.). Furthermore, Wife’s argument on appeal that the value increased by at least \$104,000 if calculated by subtracting the purchase price and pool cost from the sales price is again misplaced. See, e.g., *id. at 435-38* (explaining “it is not sufficient for the party seeking reimbursement to prove that the value of property has simply increased over time; the party seeking reimbursement must prove that the enhanced value of the property ‘was actually due to the renovations’ or other improvements” and concluding Wife’s evidence of the value of the property before the improvements and then its value with the improvements at the time of trial is insufficient to sustain a finding as to the amount of the enhancement value). **It is the difference between the fair market value of the property with improvements at the time of dissolution compared with what the fair market value of the property at the time of dissolution would be if the improvements had not been made that establishes the enhancement value of an improvement.** *Id.* at 435. Wife failed to present any evidence of what the Springbell’s fair market value would have been without the pool addition.

(emphasis added).

Kimsey v. Kimsey, 965 S.W.2d 690 (Tex. App.—El Paso 1998, pet. denied), is another example of how to prove a reimbursement claim involving capital improvements by presenting evidence of

the value of the land with and without capital improvements. The difference in the values was held to be sufficient evidence of the value of the enhancement to the husband's separate estate using community funds.

In re Marriage of Moore, No. 12-22-00286-CV (Tex. App. – Tyler, 5/10/23)(mem. op.) is a recent example of how to prove enhanced value using an appraiser to show the current value and the wife/owner's testimony as to the value of the property without improvements:

In distributing the marital estate, the trial court awarded Andrea a reimbursement to her separate estate in the amount of \$228,500.00 for the improvements to the half-acre and house. Kyle Engel, a licensed real estate appraiser, testified that as of November 3, 2021, he valued the half-acre with improvements at \$344,000.00, based on the "market comparison approach" and the "cost approach." However, Engel conceded that his estimate assumed the property would come with an easement to access the nearest public road, as the half-acre was entirely surrounded by land owned by Shawna, Inc., and that lack of such an easement could impact the property's value. Rohrbach testified that documents he reviewed showed that Shawna, Inc. paid \$216,000.00 for the entire 33.3-acre tract of land in 2016, and that the total cost of the improvements was \$288,070.00. And Andrea testified that she believed the value of the half-acre without the improvements was approximately \$3,000.00, because it was an undesirable "sand pit"-an amount only slightly lower than the per-acre price Shawna, Inc. paid for the land. The difference between the alleged fair market value of the property before and after the improvements based upon the trial testimony would be \$341,000.00. The trial court's reimbursement award of \$228,500.00 was therefore significantly lower than both the enhancement value Andrea sought to establish and the cost of the improvements to the original half-acre and comports with the trial court's finding that the correct value of the property with the improvements was in fact \$232,000.00. We cannot conclude from this evidence that the trial court improperly based its award of this reimbursement on the cost of the improvements. Viewing the evidence in the light most favorable to the trial court's ruling, the record contains some evidence of substantive and probative character to support the trial court's determination of the reimbursement amount.

Zamiatowski v. Zamiatowski, No. 14–13–00478–CV (Tex. App. – Houston [14th Dist.] Apr. 30, 2013, no pet.) (mem.op.) involved proof of an enhancement claim without expert testimony. That case involved evidence of: (1) the property's value shortly before a warehouse was built on the husband's separate property land; (2) a relatively short time period between the date of the improvements and another valuation before trial; and (3) a reimbursement award at a significantly lower amount than the difference between the two valuations. The Houston Fourteenth Court of Appeals affirmed a reimbursement claim of \$55,675 when the property was valued at \$76,400 in 2007, a warehouse was constructed in 2008, and the property was valued at \$175,000 in 2010; there was "some probative evidence of a difference in fair market value of \$98,600 before and after the improvement." It turns out that "some evidence" was the husband's own inventory which showed his valuation of his separate property real estate as of trial. This case was cited as an example of how to prove enhanced value in *In re Marriage of McCoy & Els*, 488 S.W.3d 430, 435 (Tex. App. - Houston [14th Dist.] 2016, no pet.).

B. Community Property Used to Enhance the Value of Separate Property That Should Have Been Paid With Separate Property

If community funds were used to remodel the kitchen in a separate property house, the lawyer presenting the reimbursement claim would need to prove:

1. Community funds were used to pay for the improvements;
2. Payment for the improvement benefited the separate property of a spouse;
3. The amount that the improvement enhanced the value in the separate property;
4. Unjust enrichment of the separate estate will occur if the separate estate is not required to reimburse the community estate.

C. Separate Property Used to Enhance the Value of Community Property That Should Have Been Paid With Community Property

If separate funds were used to add a swimming pool to a community property house, the lawyer presenting the reimbursement claim would need to prove:

1. Separate funds were used to pay for the improvements. The spouse asserting this claim must prove "...by clear and convincing evidence that the funds expended on behalf of the community estate were separate funds." This will likely require tracing and often an expert witness.
2. Payment for the improvement benefited the community estate.
3. The amount that the improvement enhanced the value in the community property.
4. Unjust enrichment of the community estate will occur if the community estate is not required to reimburse the separate estate.

A Spouse Used Time, Toil, Talent or Effort to Enhance Value of Separate Property

Sec. 3.402(c)(2) allows a reimbursement claim for:

- (3) one or both spouses used time, toil, talent, or effort to enhance the value of property of a spouse's separate estate beyond that which was reasonably necessary to manage and preserve the spouse's separate property, and for which the community marital estate did not receive adequate compensation.

This sort of reimbursement claim is based on *Jensen v. Jensen*, 665 S.W.2d 107 (Tex. 1984) and usually arises when one spouse works for free or for nominal pay during the marriage for the other spouse's separate property business. Imagine that the wife is a physician and her husband works as the office manager and Internet webmaster for the wife's separate property medical practice she owned before marriage and the husband is only paid \$1,000 a month. After twenty years of this arrangement, the spouses divorce. If there is evidence that a medical practice office manager

typically is paid \$70,000 to \$110,000 a year, the husband could probably assert a reimbursement claim. Of course, one defense the wife would assert is that the husband knew all along that he was being underpaid and he consented and agreed with the reasons for the low pay. The wife could argue that the low pay for the husband was simply to allow him to qualify for his own lower cost health insurance and qualify for social security. She might contend that the low pay for the husband allowed the practice to pay the wife more and that higher pay for the wife benefited the husband during the marriage. Also, how does the husband show that his work enhanced the value of the medical practice?

Sec. 3.402(d)(3) states:

(3) if the benefit resulted from the use of time, toil, talent, or effort to enhance the value of property of a spouse's separate estate, then the value of the benefit conferred is measured by the value of the time, toil, talent, or effort beyond that which was reasonably necessary to manage and preserve the spouse's separate property.

The new statute requires the spouse asserting the claim to show that her work enhanced the value of the separate estate but the measure of recovery is the value of the work done.

The lawyer for the husband in this example presenting this sort of reimbursement claim would thus need to prove:

1. The husband used time, toil, talent or effort to enhance the value of the separate property business beyond that which was necessary to manage and preserve the wife's separate property medical practice.
2. The community estate did not receive adequate compensation for the husband's work.
3. the value of the time, toil, talent, or effort beyond that which was reasonably necessary to manage and preserve the spouse's separate property
4. The husband in equity and good conscience should have been paid more; and
5. Unjust enrichment of the separate estate will occur if the separate estate is not required to reimburse the community estate.

Principles of Equity

Courts deciding reimbursement claims are to apply equitable rules in resolving them. Tex. Fam. Code § 3.402(b); Tex. Fam. Code § 7.007. A few historical "maxims on equity" which courts apply when the law requires them to resolve disputes based upon equitable principles include:

- Equity is a court of conscience. *First Heights Bank, FSB v. Gutierrez*, 852 S.W.2d 596, 605 (Tex. App. - Corpus Christi 1993, writ denied).
- Equity seeks to prevent unjust enrichment, and in particular, abhors that unjust enrichment which comes from a double satisfaction of an obligation. *Id.*
- Equity seeks to do justice, to strike a balance by reviewing the entire situation. *Id.*

- Equity acts in accordance with conscience and good faith and promotes fair dealing; it will not further an improper objective which is likely to cause a detriment to the other party. *Id.*
- Equity aids the diligent and not those who slumber on their rights. *Rivercenter Assocs. v. Rivera*, 858 S.W.2d 366, 367 (Tex. 1993).
- The unclean-hands doctrine "allows a court to refuse to grant equitable relief sought by one whose conduct in connection with the same matter or transaction has violated the principles of equity and righteous dealing." *In re D.D.*, 661 S.W.3d 608, 621 (Tex. App.-El Paso 2023, orig. proceeding). The doctrine applies "only to one seeking equity 'whose own conduct in connection with the same matter or transaction has been unconscientious, unjust, or marked by a want of good faith, or one who has violated the principles of equity and righteous dealing.'" *Id.*

Remedies

A trial court that grants a claim for reimbursement could consider several different remedies.

If the reimbursement claim is owed to the community estate, consider the reimbursement claim in the division of community property if there is enough community property. The most common way to do this is to list the total value of the reimbursement claim as a community asset and then put that value in the column of the spouse's whose separate property was benefited. For example, if the court grants an \$82,000 reimbursement claim in favor of the community estate against the wife's separate estate because of improvements to the wife's separate property beach house, the property division spreadsheet could look like this:

Community Property							Proposed Property Division	
Category	OMI	Item	Acct #	Balance as of	Value	Husband	Wife	
ASSETS & SECURED DEBTS								
Real Estate	J	101 Pluto Dr., Friendswood, Texas			\$ 486,508.00		\$ 486,508.00	
	J	Wells Fargo Home Mortgage	xxxx234	04/30/22	\$ (262,300.00)		\$ (262,300.00)	
Accounts	W	JSCFCU savings	xx650-S1	3/31/2022	\$ 1,006.00		\$ 1,006.00	
	W	JSCFCU checking	xx650-S2	3/31/2022	\$ 3,608.00		\$ 3,608.00	
	H	Wells Fargo checking	xx4638	3/31/2022	\$ 33,200.06	\$ 33,200		
Reimbursement	J	Community claim against Wife Separate Estate			\$ 82,000.00		\$ 82,000	
Retirement	W	Thrift Savings Plan		4/30/2022	\$ 398,529.00	\$ 52,000	\$ 346,529	
	H	ABC Company 401k		4/30/2022	\$ 583,220.00	\$ 583,220		
Vehicles	H	2019 Jeep Wrangler			\$ 25,000.00	\$ 25,000		
	H	Ally Auto Loan	xx4342	4/30/2022	\$ (20,000)	\$ (20,000)		
	W	2017 Chevrolet Bolt			\$ 9,000		\$ 9,000	
Personal Property	W	Personal Property in Wife's Possession			TBD	X		
	H	Personal Property in Husband's Possession			TBD		X	
UNSECURED DEBTS								
Unsecured Debts	H	Chase Mileage Plus Card	xx4555	4/30/2022	\$ (11,133)	\$ (11,133)		
	W	US Bank Visa	xx4678	4/30/2022	\$ (4,000)		\$ (4,000)	
					\$ 1,324,638	\$ 662,287	\$ 662,351	
						50%	50%	
Separate Property	W	Rockwall beach house						
	H	Egyptian mummy and sarcophagus						

Putting the "fictional" \$82,000 asset in the wife's column has the practical effect of moving a real asset into the husband's column to reach the property division the judge thinks is fair and just.

Another way to balance out a reimbursement claim was upheld in *Hilton n. Hilton*, 678 S.W3d 645, 649 (Tex. App. – Houston [14th Dist.] 1984, no writ). There the husband was awarded specific community property stock to compensate him for his reimbursement claim.

If the reimbursement claim is owed to a separate estate, the attorney should list the amount as a community debt on the property division spreadsheet and put it into the column of the spouse whose separate estate is owed.

Community Property						Proposed Division	
Category	ONI	Item	Acct #	Balance as of	Value	Husband	Wife
UNSECURED DEBTS							
1	Unsecured Debts	H	Splash - pool loan	xBM96	10/11/25	\$ (27,646.99)	\$ (27,646.99)
2		H	Capital One Venture One Credit Card	x8267	11/14/25	\$ (7,570.31)	\$ (7,190.78)
3		H	Cabelas Credit Card	x7301	11/14/25	X	X
4		W	Chase SWA Visa	x6846	09/10/25	X	X
5	Reimbursement	W	Reimbursement owed by Community to Wife's Separate Estate			\$ (21,200.00)	\$ (21,200.00)

The court can grant a judgment in favor of one spouse against the other spouse. *Jensen v. Jensen*, 665, 107, 110 (Tex. 1984); *Bigelow v. Stephens*, 286 S.W.3d 619, 623 (Tex. App. – Beaumont 2009, no pet.).

The court can also grant an equitable lien against the separate property that was benefited and was the subject of the reimbursement claim. Sec. 3.406(a) states, “(a) On dissolution of a marriage, the court may impose an equitable lien on the property of a benefited estate to secure a claim for reimbursement against that property by a conferring estate.” An equitable lien cannot be imposed on separate property not benefited. *Hinton v. Burns*, 433 S.W.3d 189, 199-200 (Tex. App.—Dallas 2014, no pet.).

It violates the Texas Constitution to impose an equitable lien on a homestead. *Heggen v. Pemelton*, 836 S.W.2d 145,148 (Tex. 1992); *Hinton v. Burns*, 433 S.W.3d 189, 199-200 (Tex. App.— Dallas 2014, no pet.); Geary & Wingate, “Reimbursement – Statutory and Common Law Recoveries” *Texas Bar Family Law Section Report*, Vol. 2012-4, pages 34-35 (Fall). Thus, an equitable lien could be imposed on a rent house or a vacation home but not on a spouse’s residence that was his or her’s homestead.

What does it mean to grant an equitable lien against separate property? The trial court in the case of *In re Wells*, No. 12-21-00152-CV (Tex. App. – Tyler, 8/30/2022, no pet.)(mem. op.) granted an equitable lien by awarding the husband a judgment of \$366,504 and ordering the wife to sign a real estate lien note and deed of trust in that amount secured by a lien on one of the wife’s separate property pieces of real estate that was the subject of the reimbursement claim.

Another case granted the wife a judgment for her reimbursement claim and imposed a lien on the husband’s separate property using this language:

With regard to the property at 2236 Country Road 801-C, #105, Cleburne Texas 76031, evidence established that Rene Cruey made the payments for the cost of the improvements, which benefited Mark Cruey's community property interest in this property. Rene Cruey is entitled to reimbursement of Eleven Thousand Dollars and Zero cents (\$11,000.00) from Mark Cruey for this property, to be paid within 30 calendar days of the entry of the Final Decree of Divorce. This award shall be [memorialized] as a judgment against Mark Cruey, payable to Faustina Rene Cruey, and shall accrue interest at 6%, if not paid within the time frame provided.

IT IS ORDERED AND DECREED that the community estate is entitled to reimbursement from Mark Cruey's separate estate for a portion of payments for the improvements gifted to Mark and Rene Cruey during the marriage, and that prior to the gift Rene Cruey made the payments for the improvements out of her income and that Faustina Rene Cruey is entitled to a judgment of amount Eleven Thousand Dollars and Zero cents \$11,000.00.

IT IS THEREFORE ORDERED AND DECREED that Faustina Rene Cruey is awarded a judgment in the amount of Eleven Thousand Dollars and Zero cents (\$11,000.00) against Mark Cruey. To secure payment of the judgment, Faustina Rene Cruey is granted an equitable lien on 2236 Country Road 801-C, #105, Cleburne Texas 76031 until the entire judgment, plus accrued interest, is paid in full. The judgment shall bear interest at 6 percent per year, compounded annually. The judgment and interest are payable according to the following terms: Mark Cruey shall pay to Faustina Rene Cruey Eleven Thousand Dollars and Zero cents (\$11,000.00) within 30 calendar days following the entry of the Final Decree of Divorce[.]

In re Cruey, No. 12-24-00159-CV (Tex. App. – Tyler, 8/20/2025)(mem.op.)

Appendix A -- Texas Family Code – Reimbursement

As of 9/1/2023

Sec. 7.007. DISPOSITION OF CLAIM FOR REIMBURSEMENT. In a decree of divorce or annulment, the court shall determine the rights of both spouses in a claim for reimbursement as provided by Subchapter [E](#), Chapter [3](#), and shall apply equitable principles to:

- (1) determine whether to recognize the claim after taking into account all the relative circumstances of the spouses; and
- (2) order a division of the claim for reimbursement, if appropriate, in a manner that the court considers just and right, having due regard for the rights of each party and any children of the marriage.

SUBCHAPTER E. CLAIMS FOR REIMBURSEMENT

Sec. 3.401. DEFINITIONS. In this subchapter:

- (1) "Benefited estate" means a marital estate that receives a benefit from another marital estate.
- (2) "Conferring estate" means a marital estate that confers a benefit on another marital estate.
- (3) Repealed by Acts 2009, 81st Leg., R.S., Ch. 768, Sec. 11(2), eff. September 1, 2009.
- (4) "Marital estate" means one of three estates:
 - (A) the community property owned by the spouses together and referred to as the community marital estate;
 - (B) the separate property owned individually by the husband and referred to as a separate marital estate; or
 - (C) the separate property owned individually by the wife, also referred to as a separate marital estate.
- (5) "Spouse" means a husband, who is a man, or a wife, who is a woman. A member of a civil union or similar relationship entered into in another state between persons of the same sex is not a spouse.

Sec. 3.402. CLAIM FOR REIMBURSEMENT; OFFSETS.

(a) A claim for reimbursement exists when one or both spouses use property of one marital estate to confer on the property of another marital estate a benefit which, if not repaid, would result in unjust enrichment to the benefited estate.

(b) A spouse seeking reimbursement to a marital estate must prove:

- (1) that the spouse or both spouses used property of the marital estate to confer a benefit on the property of another marital estate;
- (2) the value of the benefit described by Subdivision (1); and
- (3) that unjust enrichment of the benefited estate will occur if the benefited estate is not required to reimburse the conferring estate.

(c) For purposes of this subchapter, the property of a marital estate confers a benefit on another marital estate's property if:

- (1) one or both spouses used property of the conferring estate to pay a debt, liability, or expense that in equity and good conscience should have been paid from the benefited estate's property;
- (2) one or both spouses used property of the conferring estate to make improvements on the benefited estate's real property, and the improvements resulted in an enhancement in the value of the benefited estate's real property; or
- (3) one or both spouses used time, toil, talent, or effort to enhance the value of property of a spouse's separate estate beyond that which was reasonably necessary to manage and preserve the spouse's separate property, and for which the community marital estate did not receive adequate compensation.

(d) For purposes of this subchapter, the value of the benefit conferred by the property of one marital estate on the property of another marital estate is determined as of the date of the trial's commencement and:

- (1) if the benefit resulted from the use of the conferring estate's property to pay a debt, liability, or expense that in equity and good conscience should have been paid from the benefited estate's property, then the value of the benefit conferred is measured by the amount of the debt, liability, or expense paid by the conferring estate;
- (2) if the benefit resulted from the use of the conferring estate's property to make improvements on the benefited estate's real property, then the value of the benefit conferred is measured by the enhancement in the value of the benefited estate's real property that resulted from the improvements; or
- (3) if the benefit resulted from the use of time, toil, talent, or effort to enhance the value of property of a spouse's separate estate, then the value of the benefit conferred is measured by the value of the time, toil, talent, or effort beyond that which was reasonably necessary to manage and preserve the spouse's separate property.

(e) The determination of whether unjust enrichment will occur if one marital estate is not required to reimburse another marital estate is a question for the court to decide.

(f) The court shall resolve a claim for reimbursement by using equitable principles, including the principle that claims for reimbursement may be offset against each other if the court determines it to be appropriate.

(g) A claim for reimbursement of a marital estate by one spouse may be offset by the value of any related benefit that the other spouse proves that the conferring estate received from the benefited estate, including:

(1) the value of the use and enjoyment of the property by the conferring estate, except that the separate marital estate of a spouse may not claim an offset for use and enjoyment of a primary or secondary residence owned wholly or partly by the separate marital estate against contributions made by the community marital estate to the separate marital estate;

(2) income received by the conferring estate from the property of the benefited estate; or

(3) any reduction in the amount of any income tax obligation of the conferring estate by virtue of the conferring estate claiming tax-deductible items relating to the property of the benefited estate, such as depreciation, interest, taxes, maintenance, or other deductible payments.

(h) The party seeking an offset to a claim for reimbursement has the burden of proof with respect to the offset.

Sec. 3.404. APPLICATION OF INCEPTION OF TITLE RULE; OWNERSHIP INTEREST NOT CREATED.

(a) This subchapter does not affect the rule of inception of title under which the character of property is determined at the time the right to own or claim the property arises.

(b) A claim for reimbursement under this subchapter does not create an ownership interest in property, but does create a claim against the property of the benefited estate by the conferring estate. The claim matures on dissolution of the marriage or the death of either spouse.

Sec. 3.405. MANAGEMENT RIGHTS. This subchapter does not affect the right to manage, control, or dispose of marital property as provided by this chapter.

Sec. 3.406. EQUITABLE LIEN.

(a) On dissolution of a marriage, the court may impose an equitable lien on the property of a benefited estate to secure a claim for reimbursement against that property by a conferring estate.

(b) On the death of a spouse, a court may, on application for a claim for reimbursement brought by the surviving spouse, the personal representative of the estate of the deceased spouse, or any other person interested in the estate, as defined by Chapter [22](#), Estates Code, impose an equitable lien on the property of a benefited estate to secure a claim for reimbursement against that property by a conferring estate.

Sec. 3.409. NONREIMBURSABLE CLAIMS. The court may not recognize a marital estate's claim for reimbursement for:

- (1) the payment of child support, alimony, or spousal maintenance;
- (2) the living expenses of a spouse or child of a spouse;
- (3) contributions of property of a nominal value;
- (4) the payment of a liability of a nominal amount; or
- (5) a student loan owed by a spouse.

Sec. 3.410. EFFECT OF MARITAL PROPERTY AGREEMENTS. A premarital or marital property agreement, whether executed before, on, or after September 1, 2009, that satisfies the requirements of Chapter 4 is effective to waive, release, assign, or partition a claim for economic contribution, reimbursement, or both, under this subchapter to the same extent the agreement would have been effective to waive, release, assign, or partition a claim for economic contribution, reimbursement, or both under the law as it existed immediately before September 1, 2009, unless the agreement provides otherwise.

Sec. 3.411. CUMULATIVE REMEDIES. The remedies provided by this subchapter are not exclusive and are in addition to any other remedy provided by law.

Appendix B – H.B. 1537

H.B. 1537 passed in the 2023 Legislature and was signed by the Governor. This bill re-wrote the reimbursement statute as set forth above. In order to show the 2023 changes in the law, H.B. 1547 is set forth below:

H.B. No.

AN ACT

relating to claims for reimbursement between marital estates.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 3.401, Family Code, is amended by adding Subdivisions (1) and (2) to read as follows:

(1) "Benefited estate" means a marital estate that receives a benefit from another marital estate.

(2) "Conferring estate" means a marital estate that confers a benefit on another marital estate.

SECTION 2. Section 3.402, Family Code, is amended to read as follows:

Sec. 3.402. CLAIM FOR REIMBURSEMENT; OFFSETS. (a) A claim for reimbursement exists when one or both spouses use property of one marital estate to confer on the property of another marital estate a benefit which, if not repaid, would result in unjust enrichment to the benefited estate [~~For purposes of this subchapter, a claim for reimbursement includes:~~

~~[(1) payment by one marital estate of the unsecured liabilities of another marital estate;~~

~~[(2) inadequate compensation for the time, toil, talent, and effort of a spouse by a business entity under the control and direction of that spouse;~~

~~[(3) the reduction of the principal amount of a debt secured by a lien on property owned before marriage, to the extent the debt existed at the time of marriage;~~

~~[(4) the reduction of the principal amount of a debt secured by a lien on property received by a spouse by gift, devise, or descent during a marriage, to the extent the debt existed at the time the property was received;~~

~~[(5) the reduction of the principal amount of that part of a debt, including a home equity loan:~~

~~[(A) incurred during a marriage;~~

~~[(B) secured by a lien on property; and~~

~~[(C) incurred for the acquisition of, or for capital improvements to, property;~~

~~[(6) the reduction of the principal amount of that part of a debt:~~

~~[(A) incurred during a marriage;~~

~~[(B) secured by a lien on property owned by a spouse;~~

~~[(C) for which the creditor agreed to look for repayment solely to the separate marital estate of the spouse on whose property the lien attached; and~~

~~[(D) incurred for the acquisition of, or for capital improvements to, property;~~

~~[(7) the refinancing of the principal amount described by Subdivisions (3)-(6), to the extent the refinancing reduces that principal amount in a manner described by the applicable subdivision;~~

~~[(8) capital improvements to property other than by incurring debt; and~~

~~[(9) the reduction by the community property estate of an unsecured debt incurred by the separate estate of one of the spouses].~~

(b) A spouse seeking reimbursement to a marital estate must prove:

(1) that the spouse or both spouses used property of the marital estate to confer a benefit on the property of another marital estate;

(2) the value of the benefit described by Subdivision (1); and

(3) that unjust enrichment of the benefited estate will occur if the benefited estate is not required to reimburse the conferring estate.

(c) For purposes of this subchapter, the property of a marital estate confers a benefit on another marital estate's property if:

(1) one or both spouses used property of the conferring estate to pay a debt, liability, or expense that in equity and good conscience should have been paid from the benefited estate's property;

(2) one or both spouses used property of the conferring estate to make improvements on the benefited estate's real property, and the improvements resulted in an enhancement in the value of the benefited estate's real property; or

(3) one or both spouses used time, toil, talent, or effort to enhance the value of property of a spouse's separate estate beyond that which was reasonably necessary to manage and preserve the spouse's separate property, and for which the community marital estate did not receive adequate compensation.

(d) For purposes of this subchapter, the value of the benefit conferred by the property of one marital estate on the property of another marital estate is determined as of the date of the trial's commencement and:

(1) if the benefit resulted from the use of the conferring estate's property to pay a debt, liability, or expense that in equity and good conscience should have been paid from the benefited estate's property, then the value of the benefit conferred is measured by the amount of the debt, liability, or expense paid by the conferring estate;

(2) if the benefit resulted from the use of the conferring estate's property to make improvements on the benefited estate's real property, then the value of the benefit conferred is measured by the enhancement in the value of the benefited estate's real property that resulted from the improvements; or

(3) if the benefit resulted from the use of time, toil, talent, or effort to enhance the value of property of a spouse's separate estate, then the value of the benefit conferred is measured by the value of the time, toil, talent, or effort beyond that which was reasonably necessary to manage and preserve the spouse's separate property.

(e) The determination of whether unjust enrichment will occur if one marital estate is not required to reimburse another marital estate is a question for the court to decide.

(f) The court shall resolve a claim for reimbursement by using equitable principles, including the principle that claims for reimbursement may be offset against each other if the court determines it to be appropriate.

(g) A claim for reimbursement of a marital estate by one spouse may be offset by the value of any related benefit that the other spouse proves that the conferring estate received from the benefited estate, including:

(1) the value of the use and enjoyment of the property by the conferring estate, except that the separate marital estate of a spouse may not claim an offset for use and enjoyment of a primary or secondary residence owned wholly or partly by the separate marital estate against contributions made by the community marital estate to the separate marital estate;

(2) income received by the conferring estate from the property of the benefited estate; or

(3) any reduction in the amount of any income tax obligation of the conferring estate by virtue of the conferring estate claiming tax-deductible items relating to the property of the benefited estate, such as depreciation, interest, taxes, maintenance, or other deductible payments.

~~(h) [(c) Benefits for the use and enjoyment of property may be offset against a claim for reimbursement for expenditures to benefit a marital estate, except that the separate estate of a spouse may not claim an offset for use and enjoyment of a primary or secondary residence owned wholly or partly by the separate estate against contributions made by the community estate to the separate estate.~~

~~[(d) Reimbursement for funds expended by a marital estate for improvements to another marital estate shall be measured by the enhancement in value to the benefited marital estate.~~

~~[(e)]~~ The party seeking an offset to a claim for reimbursement has the burden of proof with respect to the offset.

SECTION 3. Section 3.404(b), Family Code, is amended to read as follows:

(b) A claim for reimbursement under this subchapter does not create an ownership interest in property, but does create a claim against the property of the benefited estate by the conferring ~~contributing~~ estate. The claim matures on dissolution of the marriage or the death of either spouse.

SECTION 4. Section 3.406, Family Code, is amended to read as follows:

Sec. 3.406. EQUITABLE LIEN. (a) On dissolution of a marriage, the court may impose an equitable lien on the property of a benefited ~~marital~~ estate to secure a claim for reimbursement against that property by a conferring ~~contributing marital~~ estate.

(b) On the death of a spouse, a court may, on application for a claim for reimbursement brought by the surviving spouse, the personal representative of the estate of the deceased spouse, or any other person interested in the estate, as defined by Chapter 22, Estates Code, impose an equitable lien on the property of a benefited ~~marital~~ estate to secure a claim for reimbursement against that property by a conferring ~~contributing marital~~ estate.

SECTION 5. Subchapter E, Chapter 3, Family Code, is amended by adding Section 3.411 to read as follows:

Sec. 3.411. CUMULATIVE REMEDIES. The remedies provided by this subchapter are not exclusive and are in addition to any other remedy provided by law.

SECTION 6. The change in law made by this Act applies to a claim for reimbursement that is pending in a trial court on the effective date of this Act or that is filed on or after that date.

SECTION 7. This Act takes effect September 1, 2023.

President of the Senate

Speaker of the House

I certify that H.B. No. 1547 was passed by the House on April 28, 2023, by the following vote: Yeas 141, Nays 3, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 1547 was passed by the Senate on May 17, 2023, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____
Date

Governor

Appendix C – 2024 Texas Family Pattern Jury Charge Sec. 204.1

Texas law recognizes three marital estates: the community property owned by the spouses together, which is referred to as the community estate; the separate property owned individually by one spouse, which is referred to as a separate estate; and the separate property owned individually by the other spouse, which is also referred to as a separate estate.

A claim for reimbursement exists when one or both spouses use property of one marital estate to confer on the property of another marital estate a benefit which, if not repaid, would result in unjust enrichment to the benefited estate.

“Benefited estate” means a marital estate that receives a benefit from another marital estate.

“Conferring estate” means a marital estate that confers a benefit on another marital estate.

Texas law does not recognize a spouse’s claim seeking reimbursement to a marital estate for the payment of child support, alimony, or spousal maintenance; for living expenses of a spouse or child of a spouse; for contributions of property of nominal value; for the payment of a liability of a nominal amount; or for a student loan owed by a spouse.

A spouse seeking reimbursement has the burden of proving each element of the claim by a preponderance of the evidence. However, a spouse seeking reimbursement to a separate estate must prove by clear and convincing evidence that the funds or assets expended were separate property. “Clear and convincing evidence” is that measure or degree of proof that produces a firm belief or conviction that the allegations sought to be established are true.

A spouse seeking an offset against a claim for reimbursement has the burden of proving each element of the offsetting claim by a preponderance of the evidence.

QUESTION 1

Did *Estate A* confer a benefit on *Estate B*?

Estate A conferred a benefit on *Estate B* if—

[Use only the instruction(s) that are relevant in a particular case.]

1. the property of *Estate A* was used to pay a *debt, liability, or expense* that in equity and good conscience should have been paid from the property of *Estate B*; or
2. the property of *Estate A* was used to make improvements on the real property of *Estate B*, and the improvements resulted in an enhancement in the value of *Estate B*’s real property; or
3. *Spouse B* used time, toil, talent, or effort to enhance the value of *Spouse B*’s separate estate beyond that which was reasonably necessary to manage and preserve *Estate B*’s property, and for which *Estate A* did not receive adequate compensation.

Answer “Yes” or “No.”

Answer: _____

If you answered “Yes” to Question 1, then answer Question 2. Otherwise, do not answer Question 2.

QUESTION 2

What is the value of the benefit *Estate A* conferred on *Estate B*, measured at the commencement of trial?

[Use only the instruction(s) that are relevant in a particular case.]

1. If the benefit conferred on *Estate B* resulted from the use of *Estate A*'s property to pay a *debt, liability, or expense* that in equity and good conscience should have been paid from the property of *Estate B*, then the value of the benefit conferred is measured by the amount of the *debt, liability, or expense Estate A* paid.

2. If the benefit conferred on the property of *Estate B* resulted from the use of *Estate A*'s property to make improvements on the real property of *Estate B*, then the value of the benefit conferred is measured by the enhancement in the value of *Estate B*'s real property that resulted from the improvements.

3. If the benefit conferred on *Estate B* resulted from the use of time, toil, talent, or effort, then the value of the benefit conferred is measured by the time, toil, talent, or effort beyond that which is reasonably necessary to manage and preserve *Estate B*'s property.

Answer in dollars and cents.

Answer: _____

If you answered Question 2, then answer Question 3. Otherwise, do not answer Question 3.

QUESTION 3

Did *SPOUSE B* prove that *Estate A* received an offsetting benefit from *Estate B*?

SPOUSE A's claim for reimbursement for benefits conferred by *Estate A* on *Estate B* can be offset by the value of any related benefit that *SPOUSE B* proves that *Estate A* received from *Estate B*, such as—

[Use only the instruction(s) that are relevant in a particular case.]

1. the value of the use and enjoyment of the property by *Estate A*;

2. income received by *Estate A* from the property of *Estate B*; and

3. any reduction in the amount of any income tax obligation of *Estate A* by virtue of *Estate A*'s claiming tax-deductible items relating to the property of *Estate B*, such as depreciation, interest, taxes, maintenance, and other deductible payments.

However, a spouse may not claim an offset for the use and enjoyment of a primary or secondary residence owned wholly or partly by a separate estate against expenditures made by the community estate to the separate estate.

An offset against a claim for reimbursement for the spouse's time, toil, talent, or effort

expended to enhance a spouse's separate estate is measured by the compensation paid to the community such as *salary, bonuses, dividends, and other fringe benefits*.

Answer "Yes" or "No."

Answer: _____

If you answered "Yes" to Question 3, then answer Question 4. Otherwise, do not answer Question 4.

QUESTION 4

What is the value of the offsetting benefit measured at the commencement of trial?

Answer in dollars and cents.

Answer: _____

COMMENT

When to use. The foregoing instructions and questions may be used to submit the claim for reimbursement of one estate against another and for offsetting benefits received by the paying estate. Only the portions of the instructions that are relevant in the particular case should be given.

Source. Reimbursement is an equitable doctrine applied to prevent unjust enrichment when one marital estate receives benefits from another marital estate that in equity and good conscience should be repaid. [Tex. Fam. Code § 3.402\(a\)](#); *Penick v. Penick*, 783 S.W.2d 194, 197–98 (Tex. 1988); *Anderson v. Gilliland*, 684 S.W.2d 673,

675 (Tex. 1985); *Vallone v. Vallone*, 644 S.W.2d 455, 459 (Tex. 1982); *see also Thomas v. Southwestern Settlement & Development Co.*, 123 S.W.2d 290, 296 (Tex. 1939) (partition case); *Dakan v. Dakan*, 83 S.W.2d 620, 627 (Tex. 1935) (probate case); *Hanrick v. Gurley*, 54 S.W. 347, 354 (Tex. 1899) (probate case).

A spouse seeking reimbursement to a marital estate must prove three elements: (1) that the spouse or both spouses used property of a marital estate to confer a benefit on the property of another marital estate; (2) the value of the benefit conferred; and (3) that unjust enrichment of the benefited estate will occur if the benefited estate is not required to reimburse the conferring estate. [Tex. Fam. Code § 3.402\(b\)](#). *See Penick*, 783 S.W.2d at 197–98; *Anderson*, 684 S.W.2d at 675; *Vallone*, 644 S.W.2d at 459. The determination of whether unjust enrichment will occur if one estate is not required to reimburse another estate is a question for the court to decide. *See Tex. Fam. Code §§ 3.402(e), 7.007*.

The court ultimately decides whether reimbursement will be permitted after considering all facts and circumstances and applying equitable principles. [Tex. Fam. Code §§ 3.402\(f\), 7.007](#); *Penick*, 783 S.W.2d at 197–98. In *Penick*, the Texas Supreme Court stated that it was "difficult to announce a single formula which will balance the equities between each marital estate in every situation and for every kind of property and contribution." The court concluded that a court should use the same discretion in evaluating a claim for reimbursement as in making a "just and right" division of the community property. *Penick*, 783 S.W.2d at 197–98. The court must resolve a claim for reimbursement by using equitable principles, including the principle that claims for reimbursement may be offset against each other if the court determines it to be appropriate. [Tex.](#)

Fam. Code § 3.402(f).

The instruction on the three marital estates is based on [Tex. Fam. Code § 3.401\(4\)](#). The definition of reimbursement is based on [Tex. Fam. Code § 3.402\(a\)](#).

The definition of benefited estate is based on [Tex. Fam. Code § 3.401\(1\)](#). The definition of conferring estate is based on [Tex. Fam. Code § 3.401\(2\)](#).

The instructions on the payment of a debt, liability, or expense are derived from [Tex. Fam. Code § 3.402\(c\)\(1\)](#); *Penick*, 783 S.W.2d at 196; and *Colden v. Alexander*, 171 S.W.2d 328, 334 (Tex. 1943). See also *Hanrick*, 54 S.W. at 354. A claim for reimbursement for property expended by one estate to pay a debt, liability, or expense that in equity and good conscience should have been paid by another estate includes but is not limited to payment of unsecured liabilities, reduction of principal debt secured by a lien on property including a refinance, interest paid on a debt, taxes, and insurance costs that conferred a benefit on the property of another estate. See [Tex. Fam. Code](#)

[§ 3.402\(c\)\(1\)](#); *Penick*, 783 S.W.2d at 195–98. A claim for reimbursement for property expended by one estate to pay a debt, liability, or expense that in equity and good conscience should have been paid by another estate is measured by the amount of debt, liability, or expense the conferring estate paid. See [Tex. Fam. Code § 3.402\(d\)\(1\)](#); *Penick*, 783 S.W.2d at 196–98.

The instruction on improvements to real property is based on [Tex. Fam. Code](#)

[§ 3.402\(c\)\(2\)](#) and *Anderson*, 684 S.W.2d 673. A claim for reimbursement of funds expended by one estate for improvements that conferred a benefit on real property of another estate is measured by the enhancement in value of property of the benefited estate resulting from such expenditures. [Tex. Fam. Code § 3.402\(d\)\(2\)](#); *Anderson*, 684 S.W.2d at 675.

The instruction on the spouses' time, toil, talent, or effort is based on [Tex. Fam. Code § 3.402\(c\)\(3\)](#) and *Jensen v. Jensen*, 665 S.W.2d 107, 109 (Tex. 1984). A claim for reimbursement based on the time, toil, talent, or effort of a spouse is measured by the value of the time, toil, talent, or effort beyond that which was reasonably necessary to manage and preserve the spouse's separate property. [Tex. Fam. Code § 3.402\(d\)\(3\)](#).

The instruction on offset is based on [Tex. Fam. Code § 3.402\(g\)](#) and *Penick*, 783 S.W.2d at 197–98. An offset against a claim for reimbursement is measured by the value of any related benefit received by the paying estate, such as the value of the use of the property by the paying estate except under certain circumstances (see comment below entitled “Offset for use and enjoyment of residence”); income received by the paying estate from the property; and any reduction in the amount of any income tax obligation of the paying estate by virtue of the paying estate's claiming tax-deductible items relating to the property, such as depreciation, interest, taxes, maintenance, and other deductible payments. [Tex. Fam. Code § 3.402\(g\)](#); *Penick*, 783 S.W.2d at 197–98.

The instruction on offset to a claim seeking reimbursement for a spouse's time, toil, talent, or effort is based on *Jensen*, 665 S.W.2d at 110. The words *salary*, *bonuses*, *dividends*, and *other fringe benefits* should be replaced with terms appropriate to the particular case.

The phrases “one spouse” and “the other spouse” are used in place of the phrases “the husband” and “the wife” that appear in [Tex. Fam. Code § 3.401\(4\)\(B\)](#), (4)(C); the substitution is based on the ruling of the United States Supreme Court in *Obergefell v. Hodges*, 576 U.S. 644 (2015).

The instruction on claims that may not be recognized is based on [Tex. Fam. Code § 3.409](#).

The instruction on burden of proof by clear and convincing evidence for reimbursement to a separate estate is based on [Tex. Fam. Code § 3.003](#). The definition of “clear and convincing evidence” is based on [Tex. Fam. Code § 101.007](#).

The instruction on burden of proof on an offset to a reimbursement claim is based on [Tex. Fam. Code § 3.402\(h\)](#), which provides that the party seeking an offset has the burden of proof with regard to the offset.

If no separate-property reimbursement is asserted. If no claim for reimbursement to a separate estate is asserted, the second and third sentences of the sixth paragraph, relating to the clear-and-convincing-evidence standard, should be omitted.

If no offset is asserted. If no offset to a claim for reimbursement is asserted, the seventh paragraph should be omitted.

Characterization of property. Any instructions and questions necessary for establishing the characterization of relevant property should be given to the jury before the above instructions and questions concerning reimbursement are given. See [PJC 202.1–202.15](#) regarding characterization of property. If characterization of property is in dispute, see [PJC 204.3](#) (reimbursement—separate trials (comment)).

Rewording questions for specific claims. The term *Estate A* should be replaced with the marital estate to which a spouse is seeking reimbursement. The term *Estate B* should be replaced with the marital estate from which a spouse is seeking reimbursement. The words *debt*, *liability*, or *expense* should be replaced with words appropriate to the particular case. The phrases “the property of *Estate A*” and “the property of *Estate B*” should be replaced with words appropriate to the particular case. Additionally, when a reimbursement claim is based on the time, toil, talent, or effort of a spouse, then *Estate A* can only be replaced with words indicating the community property estate and *Estate B* can only be replaced with words indicating one of the spouses’ separate property estates.

Question 1 should be submitted only if there is a dispute over whether the first estate conferred a benefit on the second estate.

Question 3 should be submitted only if there is a dispute over whether *Estate A* received an offsetting benefit from *Estate B*.

Questions 3 and 4 should be submitted only if *Estate B* seeks an offset against the reimbursement claim asserted by *Estate A*.

Offset for use and enjoyment of residence. Questions 3 and 4 should not be submitted in a claim for offset for use and enjoyment of a primary or secondary residence owned wholly or partly by a separate estate against contributions made by the community estate to the separate estate. [Tex. Fam. Code § 3.402\(g\)\(1\)](#).

Marital dissolution cases filed or deaths occurring before September 1, 2009. Many claims for reimbursement in cases for dissolution of a marriage filed before September 1, 2009, or arising from the death of a spouse before that date, may be subject to statutory provisions differing from those reflected in the instructions in [PJC 204.1](#). Consult earlier editions of this book for appropriate instructions and questions for such suits.

PJC 204.2 Reimbursement—Advisory Questions (Comment)

The Committee believes the submission of advisory jury questions, which may unduly lengthen the court's charge, is generally inappropriate. For this reason, the Committee has formulated neither instructions nor jury questions seeking advisory opinions on whether reimbursement should actually be awarded and, if so, to what extent and the manner and method by which this result should be accomplished. *See* [Tex. Fam. Code § 7.007](#).