PROTECTING THE INTERESTS OF ASSIGNEES

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UTCLE
34TH ANNUAL LLCS, LPS AND PARTNERSHIPS
SEPTEMBER 18-19, 2025

Partnership and LLC Interests in a Marriage

- A partnership or LLC interest ***can be community property***, other than right to participate in management—*TBOC §§ 101.106(a-1)-(a-2), 152.203*
- If the interest is community property, ***who has the power to bind?***
- What happens when
  - ***Partner/member dies?***
  - ***Spouse dies?***
  - ***Partner/member and spouse divorce?***

Is the Interest Community Property?

- **Community property:** property, other than separate property, acquired by either spouse during marriage—*TEX. FAM. CODE § 3.002*
- **Separate property:**
  - Property owned or claimed by the spouse before marriage
  - Property acquired by the spouse during marriage by gift, devise or descent
  - Personal injury recoveries during marriage other than loss of earning capacity

  —*TEX. FAM. CODE § 3.001*

Who Has the Power to Manage?

- **General Rule:** each spouse has the ***sole management, control and disposition*** of:
  - That spouse's separate property—*TEX. FAM. CODE § 3.101*
  - Community property that the spouse would have owned if single; *e.g.*, earnings, investment proceeds—*TEX. FAM. CODE § 3.102(a)*
- **Commingling:** if one spouse's sole management property becomes mixed or combined with the other spouse's, control becomes joint—*TEX. FAM. CODE § 3.102(b)*
- **Spouses varied:** Powers of attorney or other written agreements—*TEX. FAM. CODE § 3.102(c)*

Death of Partner/Member—"Default" Rules

- **General Partnership:** A partner ceases to be a partner on death or incapacity; ***interest automatically redeemed***—*TBOC §§ 152.501(a), (b)(7), 152.601*
- **General Partner in a Limited Partnership:** A GP ceases to be a GP on death or incapacity; partnership may ***redeem*** the interest ***or convert*** it to limited partner interest with ultimate recipient being assignees—*TBOC §§ 153.155(a)(6), 153.158(a)*
- **Limited Partner or LLC Member:** On death, interest passes to estate and ultimate legatees or devisees as ***assignees***—*TBOC §§ 101.1115(2), 152.406(a)(2)(B)*

Redemption of Interest in General Partnership

- **Redemption Price:** "fair value" of interest—*TBOC § 152.602(a)*
- **Interest:** accrues from date of withdrawal (death) until price paid—*TBOC §§ 152.602(c), 152.605*
- **Status of Heirs, Etc.**
  - If redeemed, ***creditors*** for payment of redemption price—*TBOC § 152.406(a)(2)(A)*
  - If not redeemed, ***assignees***—*TBOC § 152.406(a)(2)(B)*
- **Disagreements:** special process to determine terms if disputed; must pay estimated value pending outcome—*TBOC §§ 152.607, 152.609*

Governing agreement can modify what happens to interest after death

Title search: Protecting the Interest of Assignees

Also available as part of the eCourse
2025 LLCs, LPs and Partnerships eConference

First appeared as part of the conference materials for the
34th Annual LLCs, LPs and Partnerships session
"Protecting the Interest of Assignees"