

JUDGE'S OPTIONS IN DIVIDING OR CONFIRMING PROPERTY

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For each item of community property, the judge can:

1. Award the entire item to the husband
2. Award the entire item to the wife
3. Divide the property and award part to the husband and part to the wife
4. Award joint ownership
5. Order the property to be sold

The order to sell the property should address the following (see attached form):

- a. who has the use of the property until it is sold
- b. who pays for expenses and repairs on the property before it is sold and whether the person paying for any such expenses and repairs is paid back from the sales proceeds
- c. how the sale price is determined
- d. if needed, who the broker will be or how that person will be selected
- e. how the net proceeds will be divided
- f. some mechanism for resolving disputes over the sale, such as arbitration

In some instances the judge can award a money judgment.

1. When is a money judgement awarded?
 - A. To equitably divide property, such as when the husband is awarded his dental practice worth \$300,000, the court could award the wife a judgement of \$150,000 (since the dental practice cannot be divided or, as a practical matter, ordered to be sold.)
 - B. To satisfy a claim for reimbursement.
 - C. To satisfy a claim for fraud on the community estate.
2. How to award a money judgement
 - A. Use judgment language - "Tom Smith is awarded judgment of \$120,000.00 against Sally Smith," and specify the postjudgment interest rate, per Tex. Fin. Code Sec. 304.
 - B. Specify the payment terms.
 - C. Secure with liens
 1. Owelty lien - lien on the homestead awarded to one spouse to secure payment to the other spouse - see attached form
 2. Vendor's lien - a lien on a specific item of property that secures payment to the other spouse (e.g. a lien on husband's 2,500 shares of his business)
 3. Promissory note and security agreement - see attached forms.

The judge must confirm separate property of the spouses. Tex. Fam. Code Sec. 7.002(b),(c)

The court cannot take away a spouse's separate property, but the court can:

1. Order the sale of a property that is part separate and part community. *Mogford v. Mogford*, 616 S.W.2d 936, 945 (Tex. App.—San Antonio 1981, writ ref'd n.r.e.).
2. Place a lien on separate property to secure a lien arising from a reimbursement claim against the spouse's separate estate. *Heggen v. Pemelton*, 836 S.W.2d 145, 146 (Tex. 1992). The court cannot place a lien against separate property to secure the division of community property. *Id*

The judge cannot divide:

1. Social security benefits. *Richard v. Richard*, 659 S.W.2d 746, 749 (Tex. App.—Tyler 1983, no writ.), 42 U.S.C. 407(a).
2. V.A. disability benefits, 38 U.S.C. §1110, 1131, or Military disability benefits, 10 USC § 1408(a)(4)(c).