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## COMMON LAW & COMMUNITY PROPERTY | ESTATE PLANNING

**Estate planning** is likely the last thing on your mind during a move, but moving from one state to another could greatly affect your estate plan. This is especially true if you are married and move between common law and community property states.

### Common Law Property

In the United States, there are two different marital property systems: common law and community property. The majority of states, including North Carolina, follow the common law property system. Under the common law system, each spouse solely owns and controls any property he or she acquires during the marriage and titles in their name. When one spouse dies, he or she will determine what happens to his or her property. The surviving spouse is not entitled to the decedent spouse's property unless a written agreement specifies otherwise or unless the surviving spouse makes a timely filed claim for a statutory share of the decedent's property.

### Community Property

Several states (Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin) follow the community property system. A few common law states (Alaska, Tennessee, South Dakota, Kentucky, and Florida) allow couples to elect community property by agreement or by a trust. Under a community property system, each spouse equally owns property acquired during the marriage regardless of in whose name the property is titled unless a spouse can prove that the property (i) was acquired before the marriage, (ii) was received by gift, device, or bequest, or (3) was his or her separate property before the couple became domiciled in a community property state.

This means that each spouse is presumed to own an undivided one-half interest in all property acquired during the marriage. Each spouse's undivided one-half interest in community property ends when the marriage ends. The property interest is then divided at death or divorce. If the marriage ends at death, a division is made equally between the two spouses. In the case of divorce, the division is made as the former spouses may agree or as the court orders.

### Moving States

If you move from a community property state to a common law state, your community property may retain its community property character if measures are taken to evidence and preserve the community property nature of the assets. When moving from a community property state to a

common law state, you need to document and preserve community property. This will preserve the favorable estate tax and income tax treatment and unique spousal property rights of community property.

When moving from a common law state to a community property state, you can convert your property into quasi-community property. Quasi-community property is property acquired by a couple while living in a common-law state that would have been community property had they lived in a community property state. Depending on which community property state you move to could affect how your property is classified. What happens to your property once your marriage ends, and how it is taxed?

## How JAH Can Help

It is important to consult with an attorney when planning your estate to assure your wishes are met. The **Trusts and Estates Group** at Johnston, Allison & Hord has extensive experience in estate planning and administration. We can help review your estate plan before or after a relocation. If you have any questions about your estate plan, reach out to a member of the Trusts and Estates Group.