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From: [REDACTED]

Sent: Monday, July 1, 2024 7:41:30 PM

To: [REDACTED]

Cc: [REDACTED]

Bcc:

Subject: Puerto Rico Community Property Question

Good Morning [REDACTED],

Below is a response to the questions posed. Please note that the below responses are based on an English translation of sections of Leyes De Puerto Rico Anotadas Title 31 Subtitle 7 Part III.

1. When and how does community property terminate in Puerto Rico?

Creation of the Community Regime

In Puerto Rico, the spouses may select an economic regime prior to marriage. 31 L.P.R.A. § 6911. If no regime is selected, the default regime is community property. 31 L.P.R.A. § 6912. Spouses may, *before or after* the marriage, stipulate, modify, or replace the economic regime at any time. 31 L.P.R.A. § 6914. This stipulation, modification, or replacement will not affect third parties if it is not recorded in the Registry of Matrimonial Capitulations. *Id.* If a different economic regime is not agreed to, community property begins the moment of the celebration of marriage without having to wait for the registration of the marriage in the Demographic Registry. 31 L.P.R.A. § 6952.

Termination of the Community

The community is dissolved through dissolution, declaration of nullity, or through the marital agreement of a different economic regime as provided by this Code. 31 L.P.R.A. § 7011.

Dissolution

A marriage is dissolved by the death or presumed death of a spouse and by divorce. 31 L.P.R.A. § 6741. The dissolution must be recorded in the Demographic Registry. 31 L.P.R.A. § 6742.

Dissolution by Death

Dissolution is effective from the very moment of death. 31 L.P.R.A. § 6751. If the date of death is uncertain or the veracity of the date of death is questioned, the date recorded in the Demographic Registry is taken as certain. *Id.*

Dissolution by Divorce

Divorce may be declared by court judgment or public deed. 31 L.P.R.A. § 6761. If divorce is effectuated by consent (i.e., public deed) and the marriage is governed by community property, the spouses must sign an agreement that shall contain the inventory, valuation, liquidation and award of the community assets and debts. 31 L.P.R.A. § 6831. This agreement must be registered with the divorce decree. Id.

Nullity

A marriage is void if: (1) there was no consent on the part of either of the parties, (2) it was entered into in contravention of any of the impediments identified in this Code, or (3) the required formalities were not fulfilled. 31 L.P.R.A. § 6661. The requirements for entering a marriage are: (a) legal capacity of the contracting parties, (b) express consent of the contracting parties, and authorization and conclusion of a marriage contract, observing the forms and solemnities prescribed by law. 31 L.P.R.A. § 6592.

2. What property is considered separate income and therefore might be refundable before termination of the conjugal partnership?

Community Property Defined

Under the community regime, both spouses are the owners of the common assets with equal rights and liabilities. 31 L.P.R.A. § 6951. When the partnership dissolves, the accumulated assets and the profits or benefits obtained interchangeably by any of them, while the marriage was in force, are awarded in half. Id. Assets are presumed to be community property until they are proven separate. 31 L.P.R.A. § 6971.

Community Property Assets

Community property assets consist of:

- (a) Those acquired for consideration and at the expense of the commonwealth, whether the purchase is made for the marital partnership, for the enjoyment and benefit of family members or for only one of the spouses;
- (b) those obtained by the work or industry of either spouse;
- (c) the fruits produced by both private assets as well as community assets;
- (d) those acquired by the right of withdrawal with a marital nature, even if private funds are used in such acquisition, in which case the partnership is indebted to the spouse for the value paid; and
- (e) companies created or founded during the term of the partnership by either of the spouses, at the expense of the common assets. If separate capital and common capital are involved in the formation or development of such economic entities, the provisions of the section on co-ownership of assets shall apply.

31 L.P.R.A. § 6965.

The following is also community property:

- (a) the loss of profits, marginal benefits, and special compensation that spouses receive because of their employment or profession, as long as they are not of a very personal nature;
- (b) the product or economic result of the intellectual and artistic works and inventions that either of the spouses develops during the term of the partnership, if the law does not provide for something different;
- (c) winnings obtained by either spouse in lawful gambling or those from other causes that are exempt from restitution; and
- (d) assets donated or left in a will to the spouses together and without special designation of parties, provided that liberality is accepted by both, and the donor or testator has not decided otherwise.

31 L.P.R.A. § 6966.

Separate property

The following is a list of separate assets:

- (a) Assets that belonged to each spouse before marriage or before the partnership became effective;
- (b) Assets acquired by donation, legacy, or inheritance;
- (c) Assets acquired at the expense or in place of other separate assets;
- (d) Assets and rights inherent to a person that are not transferrable or unavailable during the person's lifetime in favor of a third party;
 - a. Rights inherent to the person are those that are created, recognized, or received by reason of the identity and individuality of the owner or recipient spouse or because of their personal qualities. Although these rights retain their very personal character, the fruits or periodic returns earned during marriage are community property, unless otherwise provided by law. 31 L.P.R.A. § 6964.
- (e) Compensation for harm or damage inflicted on the person or the person's separate assets;
- (f) Amounts or credits acquired prior the partnership and payable over a certain number of years, even if overdue amounts are received during the partnership (like a loan); and
- (g) Property acquired by right of withdrawal on assets that belonged to the person before the partnership was in force.

31 L.P.R.A. § 6961. The separate nature of the aforementioned property does not lose its separate status due to the fact that they are acquired with community funds. 31 L.P.R.A. § 6963. In this case, the community can claim as a credit the value paid in favor of the spouse for its acquisition, validation, or preservation. Id.

Other separate property includes:

- (a) clothes and objects for personal use, unless they are of extraordinary value and are purchased at the expense of common funds or funds belonging to the other

spouse. In the latter case, those that one spouse receives from the other as a donation are excluded;

(b) the degree, license, or academic or professional degree, but the partnership retains a credit for expenses incurred in the preparation, validation, and continuing education of the accredited spouse. The practice, business, or economic management that generates such accreditation is governed by the section on marital assets in this part;

(c) the instruments necessary for the exercise of the profession or trade, except when these constitute an integral part of a company, establishment or commercial business or are necessary for the exploitation of any economic initiative, of a common nature or of only one of the spouses; and

(d) new shares of stock or other securities or participations in legal entities subscribed as a result of the ownership of other private funds or assets, as well as the amounts obtained by the right to subscribe. If common funds are used for the payment of the subscription or the shares of stock are issued from the benefits, the amount paid will be refunded.

31 L.P.R.A. § 6962.

Additional rules determining the nature of property apply to disability and retirement pensions, 31 L.P.R.A. § 6967, assets acquired with both separate and community funds, 31 L.P.R.A. § 6968, and improvements or added value to assets, 31 L.P.R.A. § 6970.

3. Are there any differences in classification of income/assets under Puerto Rican community laws?

The response to question two above outlines which property is considered community and separate property in Puerto Rico. Based on the above, it does not appear that Puerto Rico's community property laws with respect to the classification of income and assets differs significantly from those of other community property states.

4. If the community terminated in the year of the offset, generally the offset is comprised of communal (before termination) and separate (post termination) income. Would offsets be prorated based on date of termination as they are in other areas?

As stated above, the community is dissolved through dissolution, declaration of nullity, or through the marital agreement of a different economic regime as provided by this Code. 31 L.P.R.A. § 7011.

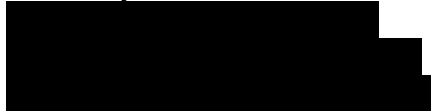
Effect of Dissolution

When the community is dissolved, it will be liquidated starting with an inventory of assets and liabilities the spouses have held since that date. 31 L.P.R.A. § 7012. The dissolution begins the post-divorce community. Once the community is dissolved, the community of assets and rights over all the elements of the common property remains

undivided. 31 L.P.R.A. § 7041. The dissolution of the post-divorce community property occurs when the dissolved community property that gave rise to it is finally liquidated. 31 L.P.R.A. § 7046. If the community is not liquidated, each spouse retains the same equal share in the undivided assets existing at the time of the dissolution as well as the fruits and products and increase or decrease in value they receive. 31 L.P.R.A. § 7042.

Accordingly, in Puerto Rico, the community remains intact until dissolution. Upon dissolution, the post-divorce community arises in which community assets and common property remain undivided. The post-divorce community is terminated upon liquidation. Since property remains undivided until liquidation, an offset would be prorated based to the date of liquidation as opposed to the date of dissolution.

Sincerely,

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