

# CHARTING REIMBURSEMENT TERRITORY, AGAIN

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Who can ever remember and keep track of all those reimbursement rights? The following chart is an **update** to the reimbursement chart that was originally published by Tanya E. Prioste and Terry Baynes in the ACFLS Newsletter, Summer 2007, No. 7. This **updated chart** is intended as a convenient guide to reimbursements under California law. Given the number of reimbursement scenarios contemplated by the law, the reimbursement rules are easily forgotten and hard to recall. Is a reimbursement allowed? Are there any exceptions to that right? Are there limitations on the amount or extent of the reimbursement? For instance, can one claim reimbursement for appreciation in value or only for the exact dollar amount contributed? On top of all these questions, does a statute of limitations apply, causing the right to expire? This chart was created (and updated) as a roadmap to the statutory and case law governing reimbursements. It is designed to help jog one's memory of the basic reimbursement framework, serving as a springboard to deeper legal research.



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|    |   | Reimbursement Available?   | Exceptions / Limitations  | Examples  | Not Examples  | Extent / Amount  |
|----|---|--|---|---|---|--|
| 1. | <b>Separate property ("SP") contributions to acquisition of community property ("CP")</b> | Yes, under Family Code ("FC") section 2640, subdivision (b).   | <p>Written waiver of right to reimbursement.</p> <p>Only contributions to the <b>acquisition</b> of the community estate.</p> <p>Contributions made <b>after separation</b> not included.</p> <p>Contributions made before January 1, 1984 not included. <i>Marriage of Lucas</i> (1980) 27 Cal.3d 808, 816.</p> <p>Donative intent of the spouse contributing SP to acquire CP alone is not enough without an express written waiver. <i>Marriage of Buie and Neighbors</i> (2009) 179 Cal.App.4th 1170.</p> <p>Property acquired by spouses during marriage in joint title form does not preclude reimbursement of SP contributed to acquire CP. <i>Marriage of Starr</i> (2010) Cal.App.4th 277.</p> | <p>"Acquisition" includes down payments, payments for improvements, and payments that reduce the principal of a loan used to finance the purchase or improvement of the property. FC, § 2640 subd. (a). Payments on the principal of a loan used to finance a purchase or improvements, but not payments for loan interest, insurance, or taxes. <i>Marriage of Cochran</i> (2001) 87 Cal. App.4th 1050, 1062.</p> <p>Purchase of car with SP, which became CP, even if car was intended as a gift for spouse. <i>Marriage of Buie and Neighbors</i> (2009) 179 Cal. App.4th 1170.</p> <p>Spouse's use of SP to pay off promissory note used to repurchase stock in that spouse's business which became CP. <i>Marriage of Brandes</i> (2015) Cal.App.4th 1461.</p> | <p>"Acquisition" does <u>not</u> include payments of interest on the loan or payments made for maintenance, insurance, or taxation of the property. FC, § 2640, subd. (a).</p> <p>Payment of community credit card debts during marriage, even when necessary for couple to qualify for a loan to purchase real property. <i>Marriage of Nicholson &amp; Sparks</i> (2002) 104 Cal.App.4th 289.</p> | <p>To the extent the spouse can <b>trace</b> his/her contributions.</p> <p>Actual amount of the contribution, even if it reduces the debt by a greater amount. <i>Marriage of Tallman</i> (1994) 22 Cal.App.4th 1697.</p> <p>Without interest or adjustment for change in value. FC, § 2640, subd. (b).</p> <p>May not exceed the net value of the property at the time of division. FC, § 2640, subd. (b).</p> <p>Any appreciation in value of community asset above amount of SP contributions to that asset belongs to the community. <i>Marriage of G. C. and R. W.</i> (2018) 23 Cal.App.5th 1, 23.</p> |
| 2. | <b>SP contributions to acquisition of other spouse's SP estate</b>                        | Yes, under FC section 2640, subdivision (c).   | <p>Question remains whether 2640, subdivision (c) can be applied retroactively to contributions pre-1/1/2005.</p> <p>Written transmutation or waiver of right to reimbursement.</p> <p>Only contributions to the <b>acquisition</b> of the other spouse's SP.</p>   | <p>"Acquisition" includes down payments, payments for improvements, and payments that reduce the principal of a loan used to finance the purchase or improvement of the property. FC, § 2640, subd. (a).</p>  | <p>"Acquisition" does <u>not</u> include payments of interest on the loan or payments made for maintenance, insurance, or taxation of the property. FC, § 2640, subd. (a).</p>  | <p>Without interest or adjustment for change in value. FC, § 2640, subd. (c).</p> <p>May not exceed the net value of the property at the time of division. FC, § 2640, subd. (c).</p>  |
| 3. | <b>SP used for community purposes during marriage</b>                                     | No, deemed to have made a gift to the community. <i>Marriage of Lucas</i> (1980) 27 Cal.3d 808, 816. | <p>Agreement by parties for reimbursement. <i>Marriage of Lucas</i> (1980) 27 Cal.3d 808, 816.</p> <p>When SP is contributed to the acquisition of CP (down payment, improvement, reduction of principal) and the contributing spouse can trace the contribution to SP source, that spouse has a right to reimbursement. FC, § 2640.</p>  | <p>SP payments of interest on a loan, SP payments for maintenance, insurance, or taxation of property.</p> <p>SP funds spent on family living expenses. <i>Marriage of Lange</i> (2002) 102 Cal.App.4th 360, 365.</p>   | <p>SP contributions to the acquisition of CP (down payment, improvement, reduction of principal) and the contributing spouse can trace the contribution to SP source.</p>   | N/A  |

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| 4. | <b>SP to improve CP after separation</b>   | Yes, treated the same as mortgage payments. Not governed by FC section 2640 under <i>Marriage of Reilley</i> (1987) 196 Cal.App.3d 1119, 1124 n3.  | Limited by the extent to which the monies spent on "improving" the CP actually increase its value.<br><br>Prior to 1984, improvements to CP assets with SP monies only reimbursable if by agreement. <i>Marriage of Lucas</i> (1980) 27 Cal.3d 808.  | Post-separation SP expenditures on remodeling CP that increase the fair market value of the CP.  | SP sums unilaterally spent to remodel CP residence where inadequate records kept and appraiser assigned no incremental value to the improvements. <i>Marriage of McNeill</i> (1984) 160 Cal. App.3d 548.<br><br>"Improvements" that violated local CC&R's and lacked building permits. <i>Marriage of McNeill</i> (1984) 160 Cal.App.3d 548.  | Not necessarily the amount paid. If increase in value of CP is slight compared to amount paid for improvements, then may limit to increase in property's value.<br><br>Other factors may justify reimbursement in amount paid (e.g., parties' agreement to make improvements; improvements necessary to preserve the asset). |
| 5. | <b>SP to pay community debts after separation</b>  | Yes, court has broad discretion to order reimbursement for debts paid after separation. FC, § 2626; <i>Marriage of Epstein</i> (1979) 24 Cal.3d 76, 84; <i>Marriage of Hebbing</i> (1989) 207 Cal.App.3d 1260.   | No reimbursement if unreasonable when:<br><br>Parties agree to no reimbursement.<br><br>Paying party intended a gift.<br><br>Payment towards the acquisition or preservation of an asset the paying party was using, and the amount paid was not substantially in excess of the value of the use.<br><br>Payment discharged the paying party's child or spousal support obligations. <i>Marriage of Epstein</i> (1979) 24 Cal.3d 76, 84.   | SP mortgage payments on CP after separation (see "Extent / Amount").<br><br>Payment of more support than otherwise required may be reimbursed to prevent a spouse's unjust enrichment. <i>Marriage of Peet</i> (1978) 84 Cal.App.3d 974.<br><br>Value of a spouse's post-separation services necessary to complete performance owed by the community under a contract made during marriage. <i>Marriage of Feldner</i> (1995) 40 Cal.App.4th 617, 624. | Payments on residence party was occupying. <i>Marriage of Stallworth</i> (1987) 192 Cal.App.3d 742, 750.<br><br>Payments on refrigerator not substantially in excess of value of use. <i>Marriage of Tucker</i> (1983) 141 Cal.App.3d 128, 136.<br><br>House and car payments made in partial satisfaction of support obligations. <i>Marriage of Green</i> (1989) 213 Cal.App.3d 14, 22. | Reimbursement for SP mortgage payments on CP, unlike pre-separation payments, is not governed by FC section 2640 and is not limited to principal reduction payments. <i>Marriage of Hebbing</i> (1989) 207 Cal.App.3d 1260, 1272.  |
| 6. | SP to satisfy debt incurred by other spouse for "necessaries" of life during marriage or the "common necessities" of life <u>post-separation</u> | Yes, if SP contributed when there was nonexempt CP or the debtor spouse had his/her own SP available. FC, § 914, subd. (b).<br><br>Right of reimbursement regardless of whether property applied to debt voluntarily or involuntarily and whether debt satisfied entirely or partially. FC § 920, subd. (a).<br><br>Based on the fact that a married person is personally liable for debt incurred for necessities of life of the person's spouse while the spouses are living together and personally liable for debt incurred for common necessities of life of the person's spouse while the spouses are living separately. FC, § 914, subd. (a). | Subject to express written waivers. FC, § 920, subd. (a).<br><br>Must be exercised within three years after party claiming reimbursement acquires actual knowledge of the facts giving rise to the rights. Must also be exercised in the marital action (assuming three-year period has not expired) otherwise waived. FC, § 920, subd. (c). Marriage does not toll the statute of limitations.<br><br>"Common necessities" of life: articles that, in the hands of everyone, are universally or substantially necessary to sustain life. <i>Ratzlaff v. Portillo</i> (1971) 14 Cal.App.3d 1013. | Food, clothing, and shelter are "necessaries of life."<br><br>Last illness expenses constitute "necessaries of life." <i>Collection Bur. of San Jose v. Rumsey</i> (2000) 24 Cal.4th 301, 313.   | Automobile, even if necessary for transportation to work, may be a "necessary" but is not a "common necessary" of life. <i>Ratzlaff v. Portillo</i> (1971) 14 Cal.App.3d 1013.  | To the extent the debtor spouse had his/her own SP or nonexempt CP available. FC, § 914, subd. (b).<br><br>Measured as the value of the property at the time the right to reimbursement arises. FC, § 920, subd. (b). No interest.   |

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| 7.  | SP to satisfy debt assigned to other spouse in property division                                     | Yes, if debtor spouse's SP or share of CP is applied to satisfy a money judgment for a debt that was assigned to the other spouse in a property division proceeding, debtor spouse can claim reimbursement from "assignee" spouse. FC, § 916, subd. (b). | Must be exercised within three years after party claiming reimbursement acquires actual knowledge of the facts giving rise to the rights. FC, § 920, subd. (b).  | CP awarded to nondebtor spouse remains liable for satisfaction of existing liens. Nondebtor spouse may seek reimbursement to extent property applied towards liens. <i>Lezine v. Security Pacific Financial</i> (1996) 14 Cal.4th 56.   | Where 3rd party creditors took note signed by H but not W after parties agreed to assign residence to wife under property settlement agreement but before signing of deed, W's SP residence not subject to separate debts of H. <i>Kennedy v. Taylor</i> (1984) 155 Cal.App.3d 126.  | Extent of property so applied, plus interest at the legal rate, plus "reasonable" attorney fees incurred in enforcing the reimbursement right. FC, § 916, subd. (b).  |
| 8.  | CP to satisfy a spouse's child or spousal support obligations from a prior relationship              | Yes, if the obligor spouse has nonexempt SP available. FC, § 915, subd. (b).   | Subject to express written waivers. FC, § 920, subd. (a).<br><br>Must be exercised within three years after party claiming reimbursement acquires actual knowledge of the facts giving rise to the rights. Must also be exercised in the marital action (assuming three-year period has not expired) otherwise waived. FC, § 920, subd. (c). Marriage does not toll the statute of limitations.<br><br>The SP must have been available at the time the spouse made the specific support payments. <i>Marriage of Sherman</i> (2005) 133 Cal.App.4th 795, 804-05. | Use of CP after separation and before trial to pay support obligation from prior marriage gives other spouse right of reimbursement against obligor spouse's share of community estate. <i>Marriage of Williams</i> (1989) 213 Cal.App.3d 1239, 1245-1246.  | No right of reimbursement for CP used to support indigent parent. <i>Marriage of Leni</i> (2006) 144 Cal. App.4th 1087, 1098.  | Reimbursement in the amount of the SP income available, not exceeding the CP applied. FC, § 915, subd. (b).<br><br>To the extent the obligor spouse had SP available. FC, § 915, subd. (b); <i>Marriage of Sherman</i> (2005) 133 Cal.App.4th 795, 805.<br><br>Measured as the value of the property at the time the right to reimbursement arises. FC, § 920 subd. (b). No interest. |
| 9.  | SP to satisfy tort liability of other spouse incurred while acting for the benefit of the community  | Yes, if CP was available. FC, § 1000, subsd. (b)-(c).  | Subject to express written waivers. FC, § 920, subd. (a).<br><br>Seven-year limitations period that starts running when party claiming reimbursement acquires actual knowledge of the application of the property to the satisfaction of the debt. FC, § 1000, subd. (c). Marriage does not toll the statute of limitations.<br><br>Does not apply to the extent liability is satisfied out of proceeds of insurance for the liability. FC, § 1000, subd. (c).   | Where the spouse's tort produces income for the benefit of both spouses. <i>Marriage of Hirsch</i> (1989) 211 Cal.App.3d 104, 110-111.<br><br>W's embezzlement of funds had been put to community use. <i>Marriage of Bell</i> (1996) 49 Cal.App.4th 300, 310.  | No showing that defamation charged against H "in any way benefited the community." <i>Oyakawa v. Gillett</i> (1992) 8 Cal. App.4th 628, 631.<br><br>Intentional or criminal misconduct may be enough to show that tortfeasor not acting for benefit of community. <i>Marriage of Stitt</i> (1983) 147 Cal.App.3d 579, 587-588. | To the extent that CP was available. FC, § 1000, subsd. (b)-(c).<br><br>Measured as the value of the property at the time the right to reimbursement arises. FC, § 920, subd. (b). No interest.   |
| 10. | CP to satisfy tort liability of a spouse incurred <u>not</u> acting for the benefit of the community | Yes, if the liable party had SP available. FC, § 1000, subsd. (b)-(c).   | Subject to express written waivers. FC, § 920, subd. (a).<br><br>Seven-year limitations period that starts running when party claiming reimbursement acquires actual knowledge of the facts giving rise to the rights. FC, § 1000, subd. (c). Marriage does not toll the statute of limitations.<br><br>Does not apply to the extent liability is satisfied out of proceeds of insurance for the liability. FC, § 1000, subd. (c).   | No showing that defamation charged against H "in any way benefited the community." <i>Oyakawa v. Gillett</i> (1992) 8 Cal.App.4th 628, 631.<br><br>Intentional or criminal misconduct may be enough to show that tortfeasor not acting for benefit of community. <i>Marriage of Stitt</i> (1983) 147 Cal.App.3d 579, 177-178. | Where the spouse's tort produces income for the benefit of the community. <i>Marriage of Hirsch</i> (1989) 211 Cal.App.3d 104, 110-111.<br><br>Community liable for costs of settlement of civil claim for embezzled funds because funds put to community use. <i>Marriage of Bell</i> (1996) 49 Cal.App.4th 300, 309.         | To the extent that the liable spouse had SP available. FC, § 1000, subsd. (b)-(c).<br><br>Measured as the value of the property at the time the right to reimbursement arises. FC, § 920, subd. (b). No interest.   |

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| 11. | CP used for separate purposes             | <p>Yes, if party unilaterally uses CP to pay his/her separate obligations. <i>Marriage of Frick</i> (1986) 181 Cal.App.3d 997, 1014; <i>Marriage of Epstein</i> (1979) 24 Cal.3d 76, 89 (post-separation).</p> <p>Yes, for community-funded capital improvements to a spouse's SP. <i>Bono v. Clark</i> (2002) 103 Cal.App.4th 1409, 1423. But see, <i>Marriage of Sherman</i> (2005) 133 Cal.App.4th 795. Potential reimbursement even if spouse consents to use of CP to improve other spouse's SP. <i>Marriage of Allen</i> (2002) 96 Cal.App.4th 497, 501.</p> | <p>A spouse can use a reasonable amount of community funds for required post-separation support without the requirement of reimbursement when no support order has been made. <i>Marriage of Stallworth</i> (1987) 192 Cal.App.3d 742, 752.</p>  | <p>Reimburse the community for reasonable rental value of exclusive use of residence after separation. <i>Marriage of Jeffries</i> (1991) 228 Cal.App.3d 548; <i>Marriage of Watts</i> (1985) 171 Cal.App.3d 336.</p> <p>CP funds used by H to pay quarterly income taxes on post-separation SP salary. <i>Marriage of Epstein</i> (1979) 24 Cal.3d 76, 89.</p> <p>H's use of CP to pay for the support of his live-in companion. <i>Marriage of Cohen</i> (1980) 105 Cal.App.3d 836, 844-845.</p> <p>W's attorney fee debt incurred to defend embezzlement charges against her. <i>Marriage of Stitt</i> (1983) 147 Cal.App.3d 579, 587-588.</p> | <p>Use of CP for reasonable living expenses post-separation before issuance of temporary support order. <i>Marriage of Stallworth</i> (1987) 192 Cal.App.3d 742, 752.</p>   | <p>Reimbursement for reasonable value of party's exclusive use of CP after separation. <i>Marriage of Jeffries</i> (1991) 228 Cal.App.3d 548, 552; <i>Marriage of Watts</i> (1985) 171 Cal.App.3d 336, 374.</p> <p>If community-funded capital improvements enhanced the value of the SP, community entitled to a pro tanto interest in the SP. <i>Marriage of Wolfe</i> (2001) 91 Cal.App.4th 962, 972.</p> <p>For community-funded capital improvements that do not enhance the value of the SP, the reimbursement is limited to the actual amount of CP funds contributed. <i>Bono v. Clark</i> (2002) 103 Cal.App.4th 1409, 1427.</p> |
| 12. | CP contributions to education or training | <p>Yes, under FC section 2641(b) (1), for education / training that substantially enhances a party's earning capacity. <i>Marriage of Graham</i> (2003) 109 Cal.App.4th 1321.</p> <p>Not necessary for spouse to actually work in occupation or realize the enhanced earning capacity. Comment to FC section 2641.</p> <p>Claimant spouse bears the tracing burden.</p>  | <p>Express written agreements to the contrary. FC, § 2641, subd. (e).</p> <p>Limited to contributions that substantially enhanced a spouse's earning capacity. FC, § 2641, subd. (b)(1).</p> <p>Reimbursement may be reduced or modified if:</p> <p>(1) Community already substantially benefited (presumed if payments made over 10 years ago). FC, § 2641, subd. (c)(1).</p> <p>(2) Community contributions were made to both spouses' education. FC, § 2641, subd. (c)(2).</p> <p>(3) Education substantially reduces party's need for spousal support. FC, § 2641, subd. (c)(3).</p> | <p>Payments for education or training or the repayment of a loan incurred therefor, no matter where the parties resided when the payments were made. FC, § 2641, subd. (a).</p> <p>Direct payments for education or training (tuition, books, fees, supplies, transportation). Comments to FC, § 2641.</p> <p>Payments on a loan incurred for education or training even if debt incurred before marriage. <i>Marriage of Weiner</i> (2003) 105 Cal.App.4th 235.</p>  | <p>Ordinary living expenses (rent, food, clothing, healthcare, entertainment). <i>Marriage of Watt</i> (1989) 214 Cal.App.3d 340, 354.</p> <p>No reimbursement where any enhanced earning capacity attributable to H's unfinished legal education was speculative. <i>Marriage of Graham</i> (2003) 109 Cal.App.4th 1321, 1325.</p> | <p>Must include interest at the legal rate accruing from the end of the calendar year in which the CP contributions were made, provided by Code of Civil Procedure section 685.010. FC, § 2641, subd. (b)(1).</p>   |

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| 13. | CP to pay SP premarital debts during marriage   | Yes, regardless of which spouse applied the CP to satisfy the debt, whether the CP was applied voluntarily or involuntarily, and whether the debt was satisfied in whole or in part. FC, § 920, subd. (a).  | Subject to express written waiver. FC, § 920, subd. (a).<br><br>Must be exercised within three years after party claiming reimbursement acquires actual knowledge of the facts giving rise to the rights. Must also be exercised in the marital action (assuming three-year period has not expired) otherwise waived. FC, § 920, subd. (c). Marriage does not toll the statute.                       | H's discharge of his separate premarital debts through conveyance of CP home a "deliberate misappropriation" warranting reimbursement. <i>Marriage of Lister</i> (1984) 152 Cal.App.3d 411, 416-417.   | CP to pay education / training debts incurred before marriage. (See "Exceptions / Limitations" under "CP contributions to education or training.") | Value of the property at the time the right arises. FC, § 920, subd. (b). |
| 14. | CP payments related to SP personal injury claim | Yes, when personal injury damages are the SP of the injured party (under FC section 781, subdivision (a)) and expenses connected with the injury are paid with the other spouse's SP or CP, the other party is entitled to reimbursement from the damages received. FC, § 781, subd. (b). | Cause of action leading to damages must arise:<br><br>After entry of judgment of dissolution of marriage or legal separation.<br><br>While either spouse, if he/she is the injured spouse, is living separate from the other spouse. FC, § 781, subd. (a).  | CP payments of medical and hospital bills of injured spouse who recovers SP damages related to the injury.   | Does not apply to worker's comp awards. <i>Marriage of Fisk</i> (1992) 2 Cal.App.4th 1698, 1706.   | Amount of CP paid towards expenses.                                       |
| 15. | Destruction /impairment of CP                   | Yes, where a spouse's "separate" wrongdoing causes destruction or forfeiture of community assets. <i>Marriage of Feldner</i> (1995) 40 Cal.App.4th 617, 624.  | Does not matter whether conduct causing impairment occurred pre- or post-separation, but post-separation misconduct particularly likely to support a CP reimbursement claim. <i>Marriage of Feldner</i> (1995) 40 Cal.App.4th 617, 624.<br><br>Failure to request community reimbursement during dissolution proceedings waives the right. <i>Marriage of Feldner</i> (1995) 40 Cal.App.4th 617, 625. | Wentitled to reimbursement for her CP share of lost pension benefits caused by H's criminal misconduct while on active military service. <i>Marriage of Beltran</i> (1986) 187 Cal. App.3d 292, 294-295.<br><br>CP reimbursed for post-separation breach of contract (nonperformance or defective performance) by one spouse even if contract made during marriage. <i>Marriage of Feldner</i> (1995) 40 Cal.App.4th 617, 624. | N/A  | Extent of the loss of CP caused by spouse's separate wrongdoing.          |