

**ECONOMIC CONTRIBUTION FOR DUMMIES
(SPECIFICALLY, FAMILY AND PROBATE LAWYERS)
ECONOMIC CONTRIBUTION - TITLE ONE, SUBCHAPTER E
TEXAS FAMILY CODE**

WHAT IS ECONOMIC CONTRIBUTION?

The statute usually applies to real estate situations (although the statute says “property” and thus could conceivably include an auto or other asset). There must be either

- a debt for purchase money or capital improvements, secured by a lien, which is reduced during marriage,
- or capital improvements during marriage.

All other situations involving payment of unsecured debt still fall under the prior equitable reimbursement case law. No lien for debt, no capital improvements, no economic contribution. The Texas Economic Contribution statute is found at 3.401 of the Texas Family Code. The statute was first passed in 1999, underwent a major revision in 2001, and was amended again in 2003 (to remove a quirk that under some situations allowed for double reimbursement). The purpose of the statute is to take some of the discretion away from the courts when certain equitable reimbursement situations arise. The statute comes into play when the community is dissolved, either by death or divorce.

There are three marital estates:

1. husband’s separate
2. wife’s separate
3. the community

When funds were spent during the marriage by one estate to enhance another estate, there has long been an equitable right of reimbursement. Since the court was acting in equity, it was required to consider **all** factors to determine what was fair. Too often, the following situation was set up:

Husband owned raw land before marriage. After marriage, the parties built a house on the property with community funds. When wife requested that the community be reimbursed for the contribution to H’s separate property, H countered with the argument that while his separate property was enhanced by the

\$200,000.00 house, if you offset the fact that they got to live there rent free for 20 years (reasonable rent being \$1,000.00 per month x 240 months = \$240,000.00), and considering the tax deductions for owning the property, the community actually owes him money!

The equitable contribution statute overrules that “offset” argument by devising a formula to determine the amount that comes back into the community under the above fact situation. The statute specifically disallows any offset for the use and benefit of the property 3.403(e), as well as for payment of taxes and upkeep.

WHEN DOES THE STATUTE APPLY?

The situations where the statute will apply are when, during the marriage, one estate’s assets are used for the benefit of another estate. The most common examples:

- one party owned separate real estate prior to marriage, and after marriage, the mortgage was reduced with community property funds (e.g., the parties’ earned income).
- after marriage, one spouse used inheritance or other separate money to reduce the mortgage on community real estate.
- after marriage, the separate property real estate was refinanced.
- after marriage, separate property real estate was improved by house, garage conversion, pool, or other capital improvement.

WHAT DO I NEED TO KNOW, AND CAN I AVOID DOING ANY MATH?

Most calculations require three numbers:

1. FMV of the property on the date of death or divorce. From this number is subtracted the balance of any liens.

2. FMV of the property on the date of the first contribution. This will usually be the date of marriage if there is an existing note on the property (when they make the first payment on the note), or the day that the pool is built, or the date of the home equity loan.
3. The amount of economic contribution. This will be the amount of the mortgage reduction during marriage or the dollar amount of the added swimming pool or other capital improvement.

No, you cannot avoid doing a little math. You must be able to cipher (add, subtract, multiply and divide - third grade stuff). Here is the formula (do not tune out yet, it is easier than it looks):

Definitions

CEC = Claim for Economic Contribution

PP= Purchase Price

DoDeq = Date of Divorce Equity

DoMeq = Date of Marriage Equity

ECC = Economic Contribution by Contributing Estate

ECB = Economic Contribution by Benefitted Estate

Formula

$CEC = DoDeq * ECC / (ECC + DoMeq + ECB)$

$DoDeq = FMV - Mtg Bal$

$DoMeq = DP - ECC$

$ECB = PP - DP - Mtg Bal$

THE CLAIM IS CALCULATED BY DIVIDING THE TOTAL ECONOMIC CONTRIBUTION BY THE TOTAL EQUITY IN THE PROPERTY AND MULTIPLYING THAT PERCENTAGE BY THE EQUITY AT THE TIME OF DEATH OR DIVORCE.

Let's work some problems:

EXAMPLE ONE:

PURCHASE PRICE OF RESIDENCE: \$80K

DOWN PAYMENT: \$15K

ORIG MTG BALANCE: \$65K

MORTGAGE REDUCTION BEFORE MARRIAGE: \$15K

VALUE OF RESIDENCE ON DATE OF MARRIAGE: \$100K

MTG BAL ON DOM: \$50K

EQUITY IN PROPERTY ON DATE OF MARRIAGE: \$50K

MTG REDUCTION DURING MARRIAGE: \$30K

VALUE OF RESIDENCE ON DATE OF DIVORCE: \$200K

MTG BALANCE ON DATE OF DIVORCE: \$20K

NET EQUITY ON DATE OF DIVORCE: \$180K

FORMULA FOR EXAMPLE ONE :

$30K \text{ (COMMUNITY PAYMENTS)} / 30K + 50K \text{ (EQUITY ON DATE OF MARRIAGE)} = 37.5\% \times 180K \text{ (EQUITY ON DATE OF DIVORCE)} = \$67,500$ BROUGHT BACK INTO THE COMMUNITY TO DIVIDE.

EXAMPLE TWO: SAME AS ABOVE, BUT PROPERTY HAS NOT APPRECIATED. FMV STILL \$100K:

PURCHASE PRICE OF RESIDENCE: \$80K

DOWN PAYMENT: \$15K

ORIG MTG BALANCE: \$65K

MORTGAGE REDUCTION BEFORE MARRIAGE: \$15K

VALUE OF RESIDENCE ON DATE OF MARRIAGE: \$100K

MTG BAL ON DOM: \$50K

EQUITY IN PROPERTY ON DATE OF MARRIAGE: \$50K

MTG REDUCTION DURING MARRIAGE: \$30K

VALUE OF RESIDENCE ON DATE OF DIVORCE: \$100K

MTG BALANCE ON DATE OF DIVORCE: \$20K

NET EQUITY ON DATE OF DIVORCE: \$80K

FORMULA ON EXAMPLE TWO :

$\$30K \text{ COMMUNITY PAYMENTS} / 30K + 50K \text{ (EQUITY ON DATE OF MARRIAGE)} = 37.5\%$, BUT THIS TIME IT IS OF CURRENT EQUITY OF \$80K, MEANING \$30K BROUGHT BACK INTO THE COMMUNITY TO BE DIVIDED, THE REMAINING \$50K EQUITY REMAINS SEPARATE PROPERTY.

EXAMPLE THREE:

SAME AS ABOVE, BUT PROPERTY VALUE HAS DECLINED SINCE MARRIAGE TO \$80K

PURCHASE PRICE OF RESIDENCE: \$80K

DOWN PAYMENT: \$15K

ORIG MTG BALANCE: \$65K

MORTGAGE REDUCTION BEFORE MARRIAGE: \$15K

VALUE OF RESIDENCE ON DATE OF MARRIAGE: \$100K

MTG BAL ON DOM: \$50K

EQUITY IN PROPERTY ON DATE OF MARRIAGE: \$50K

MTG REDUCTION DURING MARRIAGE: \$30K

VALUE OF RESIDENCE ON DATE OF DIVORCE: \$80K

MTG BALANCE ON DATE OF DIVORCE: \$20K

NET EQUITY ON DATE OF DIVORCE: \$60K

FORMULA ON EXAMPLE THREE :

$\$30K \text{ (COMMUNITY PAYMENTS)} / \$30K + \$50K \text{ (EQUITY ON DATE OF MARRIAGE)} = 37.5\%$, BUT THIS TIME IT IS OF CURRENT EQUITY OF \$60K, MEANING \$22,500 BROUGHT BACK INTO THE COMMUNITY TO BE DIVIDED, THE REMAINING \$37,500 EQUITY REMAINS SEPARATE PROPERTY.

THIS RESULTS IN A NET LOSS TO THE COMMUNITY COMPARED WITH ITS CONTRIBUTION.

EXAMPLE FOUR:

SAME AS ABOVE, EXCEPT RESIDENCE PAID FOR WHEN MARRIED, AND THEREAFTER SEPARATE PROPERTY INHERITANCE IMPROVES PROPERTY WITH A \$50K SWIMMING POOL. WHEN IMPROVEMENTS BEGIN, PROPERTY IS WORTH \$140K.

PURCHASE PRICE OF RESIDENCE: \$N/A

VALUE OF RESIDENCE ON DATE OF MARRIAGE: N/A

EQUITY ON DATE OF IMPROVEMENTS: \$140,000

COST OF IMPROVEMENTS: \$50,000

VALUE OF RESIDENCE ON DATE OF DIVORCE: \$250K

NET ENHANCEMENT IN VALUE: \$60,000.

FORMULA FOR EXAMPLE FOUR:

$50K \text{ (COST OF IMPROVEMENTS)} / \text{THE SUM OF } \$50K \text{ PLUS } \$140K \text{ (EQUITY ON DATE OF IMPROVEMENTS)} = 26.3\% \times \$250K \text{ (EQUITY ON DATE OF DIVORCE)} = \$65,789 \text{ REIMBURSEMENT TO THE SEPARATE PROPERTY ESTATE OF THE PARTY WHO PAID FOR THE SWIMMING POOL}$

SUGGESTED LANGUAGE FOR PLEADINGS

The following language is taken from the Texas Family Practice Manual, 2nd edition.

CAPITAL IMPROVEMENTS

The community estate has expended funds or assets to make capital improvements on property claimed by Respondent as separate property, giving rise to a claim for economic contribution in favor of the community estate and against Respondent's separate estate. Petitioner requests the Court to grant Petitioner's claim for economic contribution, order a division of the claim to Petitioner, and, if necessary, impose an equitable lien on Respondent's separate estate or any other property awarded to Respondent to secure the claim.

AND/OR

Petitioner's separate estate has expended funds or assets to make capital improvements on community property, giving rise to a claim for economic contribution in favor of Petitioner's separate estate and against the community estate. Petitioner requests the Court to grant Petitioner's claim for economic contribution and, if necessary, impose an equitable lien on the community estate to secure the claim.

AND/OR

Petitioner's separate estate has expended funds or assets to make capital improvements on property claimed by Respondent as separate property, giving rise to a claim for economic contribution in favor of Petitioner's separate estate and against the Respondent's separate estate. Petitioner requests the Court to grant Petitioner's claim for economic contribution and, if necessary, impose an equitable lien on respondent's separate estate or any other property

awarded to Respondent to secure the claim.

REDUCTION OF SECURED DEBT

Respondent is or was obligated on[a] debt[s] secured by[a] lien[s] on property claimed by Respondent as separate property. The community estate has expended funds or assets for payment of [that/those] debt[s]. Those expenditures have resulted in the reduction of the principal of [that/those] debt[s], giving rise to a claim for economic contribution in favor of the community estate and against Respondent's separate estate. Petitioner requests the Court to grant Petitioner's claim for economic contribution, order a division of the claim to Petitioner, and, if necessary, impose an equitable lien on the Respondent's separate estate or any other property awarded to Respondent to secure the claim.

AND/OR

The community estate is or was obligated on[a] debt[s] secured by[a] lien[s] on community property. Petitioner's separate estate has expended funds or assets for payment of [that/those] debt[s]. Those expenditures have resulted in the reduction of the principal of [that/those] debt[s], giving rise to a claim for economic contribution in favor of Petitioner's separate estate and against the community estate. Petitioner requests the Court to grant Petitioner's claim for economic contribution and, if necessary, impose an equitable lien on the community estate to secure the claim.

AND/OR

Respondent is or was obligated on[a] debt[s] secured by[a] lien[s] on property claimed by Respondent as separate property. Petitioner's separate estate has expended funds or assets for payment of [that/those] debt[s]. Those expenditures have resulted in the reduction of the principal of [that/those] debt[s], giving rise to a claim for economic contribution in favor of Petitioner's separate

estate and against Respondent's separate estate. Petitioner requests the Court to grant Petitioner's claim for economic contribution and, if necessary, impose an equitable lien on the Respondent's separate estate or any other property awarded to Respondent to secure the claim.

DECREE LANGUAGE

Lien for Claim for Economic Contribution

IT IS ORDERED AND DECREED that [husband's title] pay \$_____ to [wife's title] for economic contribution of [wife's title]'s separate estate to the community estate. The claim shall bear interest at _____ percent per year and shall be payable as follows: _____. IT IS ORDERED AND DECREED that an equitable lien to secure the claim for economic contribution is imposed in favor of [wife] against _____[the entirety of the property of [husband's title]'s separate estate awarded to [husband]].

To further evidence the claim, [husband's title] is ORDERED to sign a note payable to [wife's title] in the amount of the claim specified above and payable according to the terms specified above.

[husband's title] is further ORDERED to sign _____ to secure payment of the claim.

This claim is part of the division of community property between the parties and shall not constitute or be interpreted to be any form of spousal support, alimony, or child support.

THIS IS WHAT A JURY CHARGE MIGHT LOOK LIKE ON A SIMPLE ECONOMIC CONTRIBUTION ISSUE FOR MORTGAGE PAYMENTS AFTER MARRIAGE . THE BELOW LANGUAGE IS TAKEN FROM THE TEXAS PATTERN JURY CHARGES.

NO. 2004

**IN THE MATTER OF
THE MARRIAGE OF**

**WIFE
AND
HUSBAND**

**§
§
§
§
§
§**

IN THE DISTRICT COURT

33RD JUDICIAL DISTRICT

BURNET COUNTY, TEXAS

Texas law recognizes three estates: the community property owned by the spouses together; the separate property owned individually by the husband; and the separate property owned individually by the wife.

A spouse must prove by clear and convincing evidence that funds expended were the separate property of that spouse. "Clear and convincing evidence" is that measure or degree of proof that produces a firm belief or conviction that the allegations sought to be established are true.

"Fair market value" means the amount that would be paid in cash by a willing buyer who desires to buy, but is not required to buy, to a willing seller who desires to sell, but is under no necessity of selling.

In answering Questions _____, do not consider expenditures for ordinary maintenance and repair, expenditures for taxes, interest, or insurance, or the contribution by a spouse of time, toil, talent, or effort during the marriage.

The principal amount of a debt referred to in Questions _____ may be reduced by payment on the principal of the debt and by refinancing, to the extent the refinancing reduces the principal amount in the manner described in the question.

QUESTION ____

With respect to THE HOUSE, state in dollars the amount of each of the following on DATE OF DIVORCE:

1. the fair market value Answer: \$ _____

2. the principal amount of MORTGAGE Answer: \$ _____

If in answer to Question ___ you have found that the fair market value is less than or equal to the principal amount of debt, do not answer the following questions. Otherwise, answer the following questions.

QUESTION ___

With respect to THE HOUSE, state in dollars the amount of each of the following on DATE OF FIRST CONTRIBUTION:

1. the fair market value Answer: \$ _____
2. the principal amount of MORTGAGE Answer: \$ _____

QUESTION ___

With respect to THE HOUSE, state in dollars the amount, if any, of the reduction of the principal amount of MORTGAGE, to the extent the debt existed at the time of marriage --

1. by the community estate Answer: \$ _____

WHAT HAS BEEN LEFT OUT OF THIS ARTICLE?

Lots of stuff. This article is to help you recognize when an economic contribution issue arises in your probate or divorce, and do a basic calculation. If you think you have an economic contribution issue, you will need to hit the books. If there was credit card debt used to improve the property but no M&M lien, if there was a lot of “sweat equity” but not much cash put into the improvements, or if the home equity was to pay for college, more reading will be required. If the community is making the claim, the burden of proof is preponderance of the evidence. If the separate estate of one of the spouses is making the claim, it would have to be by clear and convincing evidence.