**Community Property**

**Issue:** How do Veterans in community property states demonstrate ownership and control?

**Definition:**
Community Property: All property or income acquired by either spouse during marriage is considered equally owned by both spouses for purposes of the division of the property upon death or divorce or for purposes of business transacted by either spouse.

**The Regulation – 38 CFR § 74.3**
- (f) **Community property laws given effect.** In determining ownership interests when an owner resides in any of the community property States or territories of the United States, CVE considers applicable State community property laws. If only one spouse claims veteran status, that spouse’s ownership interest will be considered unconditionally held only to the extent it is vested by the community property laws.

**What This Means**
- Community Property States include Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin. Puerto Rico is a Community Property Territory.
- If a Veteran or service-disabled Veteran owner resides in any of the community property states or territories and is married, the Veteran or service-disabled Veteran is presumed to only own an undivided half, i.e., 50%, of the community property. The Veteran or service-disabled Veteran can submit evidence that this is not the case, i.e., the property is legally treated as separate property.
  - For example, Veteran John Smith owns 100% of Example, LLC; he is married to a non-Veteran; and he lives in Arizona. According to community property laws, he would only be regarded as holding an undivided 50% interest in Example, LLC. He would not meet the ownership requirements of 38 CFR § 74.3.
  - What Veteran John Smith could do in order to meet the ownership requirements is to provide CVE with documentation proving that he owns his interest in Example, LLC as his sole and separate property (for example, by having his spouse provide a notarized letter disclaiming her interest in the community property) or that his interest in Example, LLC is not subject to the community property laws for another reason (for example, it was acquired prior to marriage, spouse disclaims ownership interest in accordance with state law).
- In the case of multiple veteran owners, ownership percentages are combined to determine eligibility. Example: In the case of two Veteran owners, one being single, and one married, each owning 50% of the applicant. The single Veteran owner’s percentage will remain intact at 50%, whereas the married Veteran owner’s percentage will be 25%, totaling 75% Veteran ownership.

**Excerpts from Current Denial Letters**
"The VA Form 0877 Verification Application you submitted lists you, the service-disabled Veteran, as 51% owner of XXX, Inc. Your business is in the state of Arizona. Arizona is a community property state. This means that property owned by one spouse in a marriage is jointly the property of both spouses. 38 CFR § 74.3(f) states that, "[i]n determining ownership interests when an owner resides in any of the community property States or territories of the United States, CVE considers applicable State community property..."
laws. If only one spouse claims veteran status, that spouse’s ownership interest will be considered unconditionally held only to the extent it is vested by the community property laws.” This would mean that you and Ms. YYY, a non-Veteran, each own an undivided 50% interest in the company. You have not provided any evidence to support that the ownership interest in the applicant is separate or non-community property. Therefore, CVE is unable to conclude that you meet the 51% ownership requirement of 38 CFR § 74.3.”

“In response to a document request from the CVE examiner you stated that your business is a sole proprietorship. The VA Form 0877 Verification Application you submitted lists you as 51% owner. A sole proprietor owns 100% of a sole proprietorship. Your supplied tax documents list you as the proprietor of the business. California is a community property state. These laws make it so that property owned by one spouse in a marriage is jointly the property of both spouses. 38 CFR § 74.3(f) states that, “[i]n determining ownership interests when an owner resides in any of the community property States or territories of the United States, CVE considers applicable State community property laws. If only one spouse claims veteran status, that spouse’s ownership interest will be considered unconditionally held only to the extent it is vested by the community property laws.” This would mean that you and Mrs. ZZZ each own an undivided 50% interest in the company. While both of you are Veterans, only you are a service-disabled Veteran. Therefore, CVE is unable to conclude that you meet the 51% ownership requirement of 38 CFR § 74.3.”

Center for Veterans Enterprise Verification Assistance Brief - Community Property