

# What Happens to Property After a Divorce?

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## **How is property divided after a divorce?**

When the court grants a divorce, property will be divided equitably (not always equally) between the two spouses. This is decided under the Equitable Distribution Law. During the divorce both spouses have to tell the court about their income, property, and any debts they owe.

## **What does equitable distribution mean?**

Equitable distribution means fairly divided. When marital property is distributed equitably, it is divided between the two spouses as fairly as the court thinks is possible. Although this does not guarantee that the court will decide the property should be divided equally (50-50), this is usually what happens.

## **What property can be divided in the divorce?**

There are two different types of property for the purposes of a divorce. Property that the couple bought during the marriage is called "marital property". Property that belonged to you before the marriage or was a gift to just you from someone other than your spouse is called "separate property". Marital property can be divided between the two spouses.

## **What is marital property?**

Marital property includes all property either spouse bought during the marriage. It does not matter whose name is on the title. For example, if a couple bought a home, but only the husband's name was on the deed, the wife would still be entitled to some of the value of the home if they were to get a divorce.

**What is separate property?**

Separate property is property that one of the spouses owned before the marriage. For example, a bicycle that the wife had owned since before her marriage would be considered separate property. Any inheritance one spouse gets, even during marriage, is separate property. So are personal gifts (unless they came from the other spouse) and payments for personal injuries.

**Can separate property become marital property?**

Separate property can become marital property if it is mixed with marital property. For example, if one of the spouses uses money they had before the marriage to buy a house for the couple, that money might become marital property.

**What happens if the value of my separate property goes up during my marriage?**

If the value of the separate property goes up only by luck (for example, random changes in the market) then the rise in value is still separate property. If the value of the property goes up because your spouse helped to improve the property, then the rise in value may be considered marital property.

**Is my pension marital property?**

Yes. Pension plans, IRAs, 401ks, and other retirement plans are considered marital property. The portion of these plans that a spouse earned during the marriage will be divided by the court.

**How does the court determine what is equitable?**

The court should consider these things when deciding how to distribute the marital property:

- The income and property of each spouse at the time of the marriage
- How long the marriage lasted
- The age and health of both spouses
- If there are children, whether or not one spouse the custodial parent needs the home or any other marital property while the children are growing up.
- The loss of inheritance and pension benefits

- The effort of a spouse in the household (for example, a homemaker sacrificing her career for her husband's sake)

### **Is the property distribution affected by who is at fault in the divorce?**

Usually not. In cases of abuse, the abuse usually must be at the level of a violent felony to affect distribution. Distribution is more likely to be affected if one spouse has refused to help support the family or spent above the family's means.

### **Who is responsible for debts?**

The court or a divorce agreement can decide who is responsible for any debts. However, if you co-signed with your spouse and your spouse does not make debt payments as they have been ordered, you can still be held responsible by the lender.

### **What should I do to protect myself from debt that my spouse is responsible for?**

You should write to creditors to ask them to close any joint accounts. Otherwise, you will be held responsible for the current debt and any future debt if your spouse continues to use the account.

### **Can a creditor sue me even if my spouse is responsible for the debt?**

A creditor can still sue you if your spouse fails to make payments on the debt that you had co-signed. Creditors can sue you even if there is a court order that says your spouse is responsible for the debt. It is very important to make sure that you are taken off any open joint accounts you may have opened with your spouse. You are not responsible for debt that you did not co-sign for.

### **Will I lose my home?**

The court can order the home to be sold. If one of the parents has custody of the children, the court can delay the sale (usually until after the child has graduated high school). The court can also give the house to one of the spouses. This will be decided by all the things that affect equitable distribution.

### **How does the court decide if the home must be sold?**

The court will consider how much the home is worth. It will also look at any mortgages and the other types of housing options.

### **What are exclusive occupancy rights?**

Exclusive occupancy rights give one spouse the right to live in the house. The other spouse must find somewhere else to live. These rights can be given to the parent with custody of the children if the court has delayed the sale of the home. They can also be given for the safety of one of the spouses while the divorce is happening. Courts can give orders of protection, which can make the person the order is taken against to stay away from the home.

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