



## The FindLaw Guide to Divorce and Property Division

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When you go through a divorce, you will have to go through the messy process of determining how your property will be divided with your spouse. Here is some information that can help you through this difficult process.

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## Introduction

Every state has different rules regarding what property is divided at divorce and how the property is split. However, there are general principles that usually apply in every situation. The property division battle can get heated, and that's where FindLaw and its directory of attorneys can help.

## How Property is Divided

The biggest factor that determines how your property is divided is whether your state follows community property or equitable distribution rules.

In a community property state, your marital property is usually split 50-50. A court will add up the total value of the marital estate and grant each spouse an equal percentage.

States that follow community property rules include: Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin.

States that don't follow community property rules generally follow the rules of equitable distribution. This means that a judge usually takes a look at all the marital property and decides on a fair (or equitable) distribution. Some factors a court may consider in making this division include the earning power of each spouse, who earned the property, and how long the marriage lasted.

If you are unsure how property is divided in your state, [FindLaw can help get you started.](#)

## Marital Property

Not all property is subject to division at divorce. Instead, only a couple's marital assets are split.

Generally, [marital property](#) means the property a couple acquired together during marriage. Wages earned during a marriage can be considered marital property as is a home, car, and any other property purchased during the marriage. This is true even if one spouse earned the income and other spouse was a homemaker.

In contrast, [nonmarital property](#) not subject to division generally includes property that a spouse brought into the marriage as well as gifts and inheritances made to one spouse in particular.

However, keep in mind that there is a thin line separating marital from nonmarital property. Also, nonmarital property may be converted to marital property if mixed together or commingled such as with a joint bank account. For example, if you receive an inheritance and place that money in a joint account, that inheritance may be converted from nonmarital property to marital property subject to division.



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When going through the property division process, it's probably a good idea to work with an attorney to determine what property is subject to division.

## Who Keeps the Family Home?

Perhaps the single biggest question in a property division is who keeps the family home. Unfortunately, there is no clear-cut answer.

Generally, if the couple has children living in the home, the law favors giving the house to the spouse who will have primary custody of the children. The other spouse will then usually receive a larger award of other assets to make up for the difference. If the parties cannot afford to keep the house, the home may be sold and the proceeds divided between the parties.

If there are no children involved, courts have a much more difficult decision to make and factors they may consider vary considerably. Neither party typically has a legal right to ask the other to leave, but one partner can always request it.

## Coming to a Property Division Agreement

A couple can either reach an agreement between themselves over what property each will receive or a court may step in and make the decision for them.

Even if you are trying to reach an informal agreement with your spouse, it's probably a good idea to have an attorney on your side to make sure that you get a fair share. An attorney can help you determine what is marital property and can help facilitate an equitable distribution. [Here is a sample property settlement agreement](#) to get you started.

If you are unable to reach an informal agreement, a court may step in and make the decision for you. In this case, the court will generally split the property according to state rules on property division like whether the property is split evenly (community property states) or distributed equitably.

**STOP**

## Should I Talk to an Attorney?

If you are unsure how your state divides property at divorce or what property is subject to division, you will want to contact a family law attorney. Additionally, if you are trying to reach an agreement with your spouse over how your property is divided, an attorney can help advocate for your rights and facilitate an agreement. If the property division heads to court, you will definitely want an experienced attorney on your side.

You can locate a family law attorney now by visiting [www.findlaw.com](http://www.findlaw.com) and choosing among several quality-assured lawyers in your area.

## For More Information

Regarding property division and other family related issues, visit <http://family.findlaw.com>

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