



The FindLaw Guide to Divorce and Property Division

The FindLaw Guide to Divorce and Property Division

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.

Table of Contents

- Introduction
- How Property is Divided
- Marital Property
- Who Keeps the Family Home?
- Coming to a Property Division Agreement
- Should I Talk to an Attorney?

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.




Find a Divorce
Attorney Near You



Learn More: Marital and communal property, Checklists for dividing marital property, sample settlement agreements and what to know about debts, pension, policies and other FAQs.

FindLaw®

Follow us on  

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 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>

Send Us Your Feedback

We're listening! Send us your feedback [here](#).

Disclaimer: The information you obtain in this publication is not, nor is it intended to be, legal advice. You should consult an attorney for advice regarding your individual situation.

[Disclaimer](#) | [Terms](#) | [Privacy](#)



Find a Divorce
Attorney Near You



Learn More: Marital and communal property, Checklists for dividing marital property, sample settlement agreements and what to know about debts, pension, policies and other FAQs.

FindLaw®

Follow us on

FINDLAW.COM EMPOWERS PEOPLE WITH TRUSTED, TIMELY AND INTELLIGENT LEGAL INFORMATION

BLOGS – FindLaw Blogs present timely news that has real-life implications, deliver important information and discuss law-related entertainment.

FINDLAW ANSWERS – A vibrant, interactive online community where everyday people can ask legal questions and get real-time answers from legal professionals and others with similar experiences.

NEWS & NEWSLETTERS – Updated throughout the day and night and covering a wide range of legal topics, FindLaw.com's News page presents current legal news, keeping people informed and educated.

FIND A LAWYER – An easy-to-search database of more than one million lawyers and law firms. It provides detailed information, enabling people to contact a qualified lawyer when they are ready.



DO-IT-YOURSELF FORMS & CONTRACTS – FindLaw.com provides accurate legal documents for common legal matters. Choose from a library of easy-to-use, low-cost, accurate legal forms for everyday legal issues.

FINDLAW VIDEO – On FindLaw.com, you'll find an online directory of more than 1,500 short videos dedicated exclusively to legal topics and attorney and law firm profiles.

#1 Free Legal Website

FindLaw.com is the leading and largest online resource for legal information. For basic legal issues to more complex ones, you'll find thousands of helpful articles, a legal community to get answers to your specific questions, an attorney directory, blogs, news, DIY forms, and much more.

Connect With Us

FindLaw.com has an entire social media team dedicated to providing our users with as many options as possible to join, participate in, and learn from the FindLaw community. Some of the social key channels are the following:



[FindLaw for Consumers on Facebook](#)

Making the law easy to access with interactive legal updates aimed at starting conversations, informing followers of their legal rights and providing a forum for questions and resources



[@FindLawConsumer on Twitter](#)

Tweeting interesting, entertaining and informative legal news everyday

FindLaw[®]
A Thomson Reuters Business