

Divorce 5: How the Courts Divide Jointly-Owned Property

On October 1, 2023, Maryland law on divorce changed. This tip sheet discusses how you and your spouse, or the court, will split up your property in a divorce. The law on division of property in a divorce did not change October 1, 2023. This tip sheet is up to date with the law.

Even if you and your spouse go to mediation or work out an agreement, you should know how the court will deal with your property in a divorce. That way, you are knowledgeable when you sit down to work out an agreement.

What is Marital Property?

- Marital property is property acquired during your marriage, regardless of how it is titled or who paid for it. It may include houses, cars, furniture, appliances, stocks, bonds, jewelry, bank accounts, and retirement plans.
- Marital property includes property acquired from the date of your marriage until the date your divorce is final. If you or your spouse acquired property during your separation, it is still considered marital property.

What is Considered Non-Marital Property?

- Property you or your spouse acquired before your marriage is non-marital, or separate, property.
- Non-marital property includes gifts or inheritances made to only you or your spouse.
- Property directly traceable to non-marital property, such as items purchased with money from an inheritance, is also non-marital property.

Other Types of Property

- Some property may be both marital and non-marital. For instance, if you or your spouse bought a house before marriage, it is non-marital property. But, when marital funds are used to pay the mortgage, your home becomes part marital and part non-marital property.
- Commingled marital property is when non-marital property is mixed with marital property. The court may determine that the property is now marital.

Joint Statement of Parties Concerning Marital and Non-Marital Property

- If you and your spouse agree on property distribution, you may submit your agreement to the court. If you do not agree, you must complete a Joint Statement of Parties Concerning Marital and Non-Marital Property.
- The Joint Statement, or form CC-DR-033, must list all property owned by you, your spouse, and both of you. On the form, you each indicate whether you agree or disagree on what is marital and non-marital property. Submit this form if you and your spouse want to ask the court to determine how your property will be divided.



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What the Court Can and Cannot Do with Your Property

- The court can order the sale of joint property such as houses or cars with an equal division of the proceeds of the sale.
- The court cannot transfer a title from one spouse to the other if the property is owned individually, but it can order one spouse to transfer ownership of your jointly-owned home to the other spouse. Even though the court cannot transfer title, the court can require one party to compensate the other for the value of that item if it is considered marital property.
- The court cannot transfer debt from one person to another. For example, if you took out a car loan in your name only, the court cannot make the other person make those car payments.
- The court also may transfer interest in a pension or ownership of personal property from one spouse to the other.

A Word about Pensions

- Pension or retirement benefits earned during your marriage are marital property. If a portion of the benefit was earned prior to your marriage, it may be considered part marital and part non-marital.
- One spouse may be eligible for a share of the other's pension or retirement benefit. This is one area of divorce in which you should consult a lawyer. You will need a lawyer's help to evaluate your rights to any retirement benefits and, if eligible, to draft a special court order that will be used to distribute those benefits.

Where to Get Help

- If you and your spouse own significant property, have retirement assets, or own a business, you should consult with a lawyer.
- Speak with a lawyer free of charge at the Maryland Court Help Center. Help Center lawyers cannot represent you in court, but they can provide brief advice and help with court forms. Call 410-260-1392. The call center is open Monday through Friday from 8:30 a.m. to 8 p.m.
- You may also consider finding a lawyer to help with one portion of your divorce case. This is called limited-scope representation.