

## **Divorce Part 5: How Property is Divided**

Hello. In this video, I'll talk about how property is divided in divorce. I'll cover settlement agreements and explain how the court decides who gets what in a divorce. I'll also explain something called "use and possession" of the family home and property, which is important if you have children in common.

This can get really complicated, so I recommend talking to a lawyer about your rights and options. Once property is divided in divorce it can be very difficult to undo things.

Let's start by defining two terms: marital property and non-marital property.

### **CHAPTER HEARING: MARITAL AND NON-MARITAL PROPERTY**

With few exceptions, marital property is property that was acquired by either party at any time from the date of your marriage until the date your divorce is finalized. It doesn't matter whose name is on the property title or who paid for it. Marital property can include bank accounts, houses, cars, furniture and appliances, pets, household goods, jewelry, stocks and bonds, and pensions and retirement accounts. It can also include property that was acquired by one spouse before the marriage that was later titled in both spouses' names during the marriage.

Non-marital property is sometimes called separate property. This is property you or your spouse acquired before your marriage. It also includes gifts or inheritances received during the marriage from a third party that are made to only one spouse. Property that can be directly traced to non-marital property, such as items purchased with money from an inheritance, is also non-marital property. You and your spouse can enter into an agreement about what will be considered non-marital property.

Property can also be both marital and non-marital. For example, if either you or your spouse bought a house before getting married, it's non-marital property. But if marital funds, including one spouse's income, are used to pay the mortgage, the house becomes part marital and part non-marital property. There's also what's called commingled marital property, which is when non-marital property is mixed with marital property. Depending on your situation, the court may consider commingled property to be completely marital.

So why does all this matter? Because a divorce decree can only settle how marital property is divided; it cannot split non-marital property.

Now let's talk about settlement agreements and special orders.

### **CHAPTER HEADING: SETTLEMENT AGREEMENTS AND SPECIAL ORDERS**

If you and your spouse can reach an agreement dividing your marital property, that's great! If

you want the terms of the agreement to be included in your divorce decree, put them in writing, and sign, date, and submit it to the court. This can be filed with a Complaint for Absolute Divorce or submitted after the complaint is filed. The terms of your agreement must be included in your marital settlement agreement if you're divorcing on the ground of mutual consent. Check out Part 3 of this video series for more on that.

If you reach an agreement that involves the transfer of a portion of pension or retirement benefits from one spouse to the other, you may need a special court order to transfer those benefits. The order may be called a domestic relations order, qualified domestic relations orders, or QDRO. Each pension and retirement plan has specific and technical requirements for what needs to be in the order. This is something a lawyer should draft for you. File it with the court for approval.

If you and your spouse are not able to reach an agreement about how your marital property will be divided, that's OK. The court will decide for you. You and your spouse will need to file a Joint Statement of Parties Concerning Marital and Non-Marital Property, using form CC-DR-033, with the court. I'm going to call it the joint statement for short.

#### **CHAPTER HEADING: THE JOINT STATEMENT**

You only need to file a joint statement if you and your spouse cannot agree on how your marital property will be divided. You and your spouse will work on the statement together. You'll list all the property you and your spouse own and indicate whether you agree or disagree on what property is marital and what is non-marital. You will also provide information about each item's title, its value, and any liens, encumbrances, or debts associated with it. The joint statement will help the court identify what is marital property and its value. The court will then decide how to divide it using a process called equitable distribution.

#### **CHAPTER HEADING: EQUITABLE DISTRIBUTION**

Equitable distribution is a way to divide property in a divorce based on what is fair. It does not necessarily mean a 50/50 split. The court will first identify all marital and non-marital property and debts. Then, it will determine the value of any marital and non-marital property. Finally, the court will decide the fairest way to divide marital property. The court will consider a range of factors in deciding what's fair, including how long you were married, both of your financial and non-financial contributions to your household, the reason you're divorcing, your ages and health, the types of property, and your unique circumstances.

#### **CHAPTER HEADING: HOW THE COURT DIVIDES PROPERTY**

How the court divides marital property depends on what it is. If property cannot be divided, the court may direct one spouse to make a payment to the other to make things "equitable."

This payment is called a monetary award.

There are limits to how the court can divide some property. Except for retirement accounts, if property like a house or a car is titled in only one spouse's name court cannot order that the title be transferred to the other spouse. Instead, the court can direct the spouse who is on the title to pay the other a monetary award. The amount of the monetary award will be based on the factors I mentioned earlier.

If you and your spouse jointly own a home, the court can order the home to be sold. If the court orders a transfer, the spouse who keeps the home will have to remove the other spouse's name from any mortgage. Sometimes the court will transfer the home to one spouse and require the spouse who gets the home to pay money to the other as a monetary award.

The court cannot transfer debt from one person to the other. So, for example, if you took out a car loan in your name only, the court cannot make your spouse responsible for those car payments. It also cannot order your spouse to be responsible for credit card debt that is only in your name. It can, however, consider that debt when determining how to divide marital property or whether to order a monetary award.

If you have minor children, the court can also grant one spouse what's called exclusive use and possession of the family home and family use personal property. Let me explain.

#### **CHAPTER HEADING: USE AND POSSESSION**

The family home is where you and your minor child or children lived while you were married. Other property that is used for family purposes is called "family use personal property." This can include vehicles, furniture, appliances, and other items used by your children. The court can order use of the family home and family personal property to the spouse who has physical custody of your child or children for up to three years from the time of divorce.

The goal is to allow your children to stay in a familiar environment and community during your family's period of transition. The court can order the other spouse to keep paying the mortgage or other expenses. It will consider a variety of factors, including what's in the best interest of your child or children.

The court can only order exclusive use and possession of the family home or personal property if it is marital property. So if your spouse inherited a car from someone else, the court cannot give you exclusive use and possession of it, even if it was used for family purposes.

I know that was a lot of information. As I said, this can get really complicated, especially if you or your spouse own real estate, a business, or have a pension or retirement accounts. Once your divorce is finalized, the terms of how marital property is divided cannot be changed. A lawyer can help protect your rights and interests. You can talk to one for free by

Maryland Judiciary

*Children & Family Video Library*

**Divorce (Part 5): How Property is Divided**

calling the Maryland Court Help Center at 410-260-1392 or visiting [mdcourts.gov/helpcenter](https://mdcourts.gov/helpcenter).  
I hope this was helpful.