

Getting a Divorce: Dividing Property & Debts

What is community property?

Washington is a *community property* state. Generally, all property (house, other real estate, car) a spouse gets during the marriage is community property. It belongs to both spouses, even if only one is on the title. Both spouse's earnings during the marriage are community property.

What is separate property?

Generally, it is property you got **before the marriage** through inheritance or as a gift (before or during the marriage), or **after separation**. It belongs to only one spouse.

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- ❖ If you lived together before your marriage, property and earnings you had during that time might be community property.
 - ❖ The law about division of community and separate property in divorces can be complicated. Talk to a lawyer.
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What is community debt?

Generally, all debts either spouse incurred during the marriage are community debts. Both spouses are equally responsible for them.

What is separate debt?

You incur separate debts **before the marriage** or **after separation**.

Will the court divide our property and debts 50/50?

It depends. The court can make any division that is *just and equitable*, after considering

- The nature and extent of the community property
- The nature and extent of the separate property
- How long you have been married
- Each spouse's financial situation at the time the property division will take place
- If the spouse who has custody of the children should get the family home

What is a "just and equitable division"?

It will depend. If you have children, the court will look at who will get custody. That parent will probably get to keep living in the family home, if financially possible. The court may award that parent more property and fewer debts, especially if the other spouse cannot pay much child support.

The court will also consider, especially if there are no children, what type of financial condition the property and debt division will leave you in after the divorce. The court generally does not want one spouse very wealthy and the other poor. It will consider your

- Age
- Health
- Education
- Work prospects

Example 1: You were married a long time. You did not work much outside the home. The court may award you more community property or long-term maintenance

(alimony) so you do not end up much poorer than your spouse is.

Example 2: You have a disability. You cannot work. The court may award you more community property.

Example 3: The court may consider which spouse can afford to pay the debts when deciding who must pay them.

The court will usually award each spouse their separate property and order each to pay their separate debts. It rarely awards one the other's separate property and debts.

We have a written agreement about what should happen if we divorce. Will the court honor it?

You may have one of these:

Prenuptial agreement - you signed this before marrying. It states how you would divide your property and debts if you divorced.

Community Property Agreement- You signed this during the marriage. It states what your community and separate property is. You may have done this as part of an estate plan.

Property Settlement Agreement or Separation Contract - You signed this after separating. It divides your property and debts.

If you think you have any of these, have a lawyer review it. This **might** determine how the court will divide property and debts in your case.

I bought our car and most property with my income only. Should the court award them to me?

It depends. It is community property if you bought it with money earned during the marriage. Each spouse's income during the marriage is community property. Anything you buy with either spouse's income belongs to you both. It does not matter whose paycheck you used. The judge will divide the car and other property according to what the judge decides is just.

My spouse owned our house before our marriage. We both paid the mortgage. Should I get part of the house?

Maybe. The court might award you an interest in the house. We sometimes call this an equitable lien.

The house is the other spouse's separate property. Your spouse bought it before your marriage. It remains separate after you marry UNLESS your spouse gives it as a gift to the community. This could happen if, for example, you refinance it in both names.

You may be entitled to an interest in any increase in the house's value from improvements you made to the house during the marriage, such as a remodel or new deck, plus the community payments on the mortgage. The court would subtract the house's rental value from your community interest because you had the benefit of living there during the marriage. It might rule you have no community interest in the house because of the value you got from living there.

❖ This issue is complicated. Talk to a lawyer.

What should we do with our home?

Look at

- The home's value
- What you still owe on it
- Your post-divorce incomes

Example: can just one of you pay the mortgage? If not, awarding one of you the house may lead to foreclosure and bad credit. It might be safer to sell the house.

Try not to create a situation where title is in one name, the debt in another. **Example:** The divorce awards you title to the home. No one does anything to make it official. Your spouse's name stays on the mortgage. Your spouse falls behind on payments. It will be very hard at that point to get a modification of the mortgage with your spouse's name still on it. **Avoid problems. Refinance the property in one spouse's name at or near the time of the divorce.**

❖ These are important, often complex, considerations. Talk to an experienced lawyer.

I think we should sell our house. My spouse disagrees. Can the court make us sell it?

Yes, even if one spouse objects. The court will probably order it if one of these is true:

- It is necessary to divide the property fairly.
- You are behind on payments.

Do I have any right to my spouse's pension?

It depends:

- Retirement and pension benefits, including 401(k) plans earned during the marriage, are community property. **Both** spouses have a legal interest in them.
- Pension earned before and during the marriage: the portion earned during the marriage, and the increase in value of that portion, is community property.
- Disability benefits that substitute for pension benefits might be community property.

If you believe that your spouse has a military pension, 401(k), IRA, or other retirement or disability plan, talk with a lawyer. You may be able to get a Qualified Domestic Relations Order (QDRO) ordering the pension plan to pay you benefits directly after your spouse retires. The Pension Rights Center publishes *Your Pension Rights at Divorce: What Women Need to Know*. Find out more at <http://www.pensionrights.org/publications/book/your-pension-rights-divorce-what-women-need-know> or call (202) 296-3776.

My spouse had an affair. I filed for divorce. Should the court give me more of the property?

No. Washington is a "no-fault" divorce state. The court cannot consider which spouse "caused" the divorce when dividing property. It **may** matter if your spouse wasted marital assets without your consent or tried to hide assets from the court.

I am not working. Can I get alimony?

Maybe. Maintenance (alimony) is a payment one spouse makes to the other for financial support. You will not automatically get it. The court must look at things such as:

- How long you were married
- Both spouses' financial situations, given the division of property and debts and one spouse's ability to pay maintenance
- Time it will take for you to get education or training
- Standard of living during the marriage
- Your age and health

If you have been unemployed a long time (**example:** you stayed home to raise the children), you are more likely to get maintenance than if you are temporarily out of work. On the other hand, you can get maintenance even if you are working, if the court decides you should enjoy the same standard of living you had during the marriage. You are more likely to get maintenance if both of these are true:

- You were married a long time.
- You have a disability and/or stayed home to raise the children while your spouse worked. You are less likely to get a good job now.

Maintenance generally ends when you remarry or die. The Final Divorce Order may say otherwise.

❖ Maintenance is complicated.
Talk to a lawyer.

The divorce decree ordered my spouse to pay our community debts. She did not. What can I do?

Pay the debt and sue your spouse to pay you back. Even if the court orders your spouse to pay a debt, the creditor (person owed) may still try to collect from you. Telling the creditor the debt is your ex-spouse's responsibility will not stop the creditor.

If you think this might happen, check the "hold harmless" box in the Final Divorce Order form. It is the second box in section 12. If you must sue your ex to force them to pay you back for debts you paid, they must also pay your attorney fees and costs.

Can my ex get out of paying community debts through bankruptcy?

Maybe. If your spouse files for bankruptcy, you should get notice of it. Talk immediately with a lawyer who knows bankruptcy law. You may need to take part in the bankruptcy case to protect yourself.

This publication provides general information concerning your rights and responsibilities. It is not intended as a substitute for specific legal advice.

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