

# Getting a divorce: Dividing property and debts

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❖ **This is a complicated area of law.** You should always try to talk to a lawyer about your situation. Contact info below.

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## What is the difference between community property and separate property?

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

Separate property is generally property you got before your marriage, through inheritance or as a gift (either before or during the marriage), or after separation. It belongs to only one spouse. However, if you lived together before your marriage, it might be a little more complicated. Property and earnings you had or got during that time might be community property.

## What is the difference between community debt and separate debt?

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

Debts you incur before the marriage or after separation are **separate debts**. You are not responsible for your spouse's separate debts or vice versa.

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

It depends. The court can make any division that is **just and equitable**. **What is just and equitable in your situation 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, and work prospects in making a decision.

**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 spousal support (called maintenance in Washington State) 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:** You have a lot of debt from your marriage. One of you has a lot more income than the other. 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 bought most of our property with only my income. Will the court award them to me?**

It does not matter whose paycheck you used. It is community property because you bought it with money earned during the marriage. The judge will divide the property according to what the judge decides is just.

### **My spouse owned our home before our marriage. We both paid the mortgage. Will I get part of the house?**

It depends. The house might have remained your spouse's separate property after you married.

Or the court might decide that your spouse gave the house to the two of you together as a married unit. For **example**, if you refinanced the house in both names during your marriage, 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.

Or the court could 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.

## What should we do with the home we bought together during our marriage?

Look at its value, what you still owe on it, and your incomes now. Can one of you pay the mortgage on just your income? If not, awarding one of you the home may lead to foreclosure and bad credit. It might be safer to sell it. Or you could refinance the property in one spouse's name at or near the time of the divorce.

Try not to create a situation where the title is in one name, the debt in another.

**Example:** The divorce awards you title to the home. Your spouse's name stays on the mortgage. Your spouse gets behind on mortgage payments. It will be very hard at that point to get a modification of the mortgage with your spouse's name still on it.

## We disagree about whether we should sell our home. Can the court order us to sell it anyway?

Yes. The court will likely do that if needed to divide the property fairly, or if you are behind on payments.

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

Maybe.

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

If you believe your spouse has any of the above, talk with a lawyer. You could get a court to order the pension plan to pay you benefits directly after your spouse retires. Read [I'm getting divorced: What is a qualified domestic relations order and why should I care?](#) by the Pension Rights Center, to learn more.

## The divorce decree ordered my spouse to pay our community debts. They 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 use bankruptcy to get out of paying our debts?

Maybe. Read [Divorce and Bankruptcy](#) to learn more about what you can do.

## Get Legal Help

- **Apply online** with [CLEAR\\*Online](#) - [nwjustice.org/apply-online](http://nwjustice.org/apply-online)
- **Facing a legal issue in King County** (other than Eviction or Foreclosure)? Call 2-1-1 (or toll-free 1-877-211-9274) weekdays 8:00 am - 6:00 pm. They will refer you to a legal aid provider.
- **Facing a legal issue outside of King County** (other than Eviction or Foreclosure)? Call the CLEAR Hotline at 1-888-201-1014 weekdays between 9:15 am - 12:15 pm or apply online at [nwjustice.org/apply-online](http://nwjustice.org/apply-online).
- **Facing Eviction?** Call 1-855-657-8387.
- **Facing Foreclosure?** Call 1-800-606-4819.
- **Seniors (age 60 and over)** with a legal issue outside of King County can also call CLEAR\*Sr at 1-888-387-7111.

**Deaf, hard of hearing or speech impaired callers** can call any of these numbers using the relay service of your choice.

CLEAR and 2-1-1 will provide interpreters.

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