

## A brief guide to dividing property and debts in a divorce case

### What is property?

Property refers to any tangible items or other items of value that either party in a marriage has an ownership interest in. Property is divided into two categories: (1) real property, and (2) personal property. **Real property** refers to land or a home that either spouse owns an interest in. **Personal property** refers to anything else that either party owns or possess. Personal property includes vehicles, boats, household furnishing, electronics, sentimental items, stocks, bonds, retirement accounts, financial accounts, and more.

### How is property divided in a divorce?

In a divorce, parties may agree to divide their property however they feel is best. However, if parties cannot decide how to divide their property, then they can have a trial with a judge. At trial, a judge will make a decision on how to divide marital property based on the laws outlined below.

#### Marital property

In Oregon, there is a legal presumption that all property acquired during a marriage—called **marital property**—should be split equally (50/50), regardless of who owns the property or who purchased the property.

This means that if one spouse controlled all the finances, earned all the money, and bought everything in their name alone, the other spouse is still entitled to one-half of everything that spouse owns.

#### Pre-marital property

In contrast, there is a legal presumption that all property and debts acquired prior to the marriage,

—called **pre-marital property**—belong to the person who acquired that debt or property.

There are many exceptions to this rule, however. For example, if real property increases in value during a marriage, the increase in value can be considered **marital property** subject to a 50/50 division.

#### Just and proper division

A judge has the ability to deviate from these legal presumptions if they find it is “**just and proper.**” For example, if one spouse purchases a home in their sole name a month before getting married, but then the couple lives in the home together for 10 years, a judge might find it appropriate to divide the house 50/50, even though it is pre-marital property.

### Special considerations for certain types of property

#### Real property

Dividing real property is more complicated than dividing personal property because a judge has to determine the equity in the home and then figure out how to divide the home in a way that is fair to both parties. There are two common ways real property is divided by a judge:

- Order parties to sell the property and divide the proceeds, or
- Award property to one party and order that party to compensate the other party for their share of the equity in the home.

#### Businesses

If one or both spouses had an ownership interest in a business during the marriage, the court can

divide the business. Dividing businesses is very complicated.

One of the most complicated parts of dividing business is valuing the business, especially small, family-owned business. Typically, courts use one of three ways to value a small business:

- **Asset approach** – the business is valued based on the assets that the business owns.
- **Income approach** – the business is valued based upon the income the business earns.
- **Market approach** – the business is valued based on the how similarly-situated business are valued, based on recent sales of similarly-situated business.

Most people rely on experts to value their business. The process of valuing a business is very complicated. If your divorce involves a business, you should consult an attorney right away.

### ***Retirement accounts***

Dividing retirement accounts is also complicated because the company that holds the investment requires a special court order called a “Qualified Domestic Relations Order” (“QDRO”) to divide the funds in the account without triggering tax consequences for early withdrawals.

Instead of splitting retirement accounts, a judge can decide to award one party a greater share of other items of property or accounts instead of the retirement accounts. If a judge does split retirement accounts, you will need to hire a lawyer who has experience drafting QDROs. Not all family law attorneys know how to draft this type of order.

### ***Pre-marital property that accumulated in value during the marriage***

If one spouse owned property prior to the marriage, but then both spouses used and made improvements to the property during the marriage, a judge could divide the increase in the value in the property during the marriage equally.

For example, if one spouse owned a home prior to the marriage, but both spouses resided in the

home and made improvements to the home during the marriage, then a judge can award the other spouse one-half of the increase in the value of the home during the marriage. Alternatively, if one party had retirement accounts prior to the marriage, but continued to contribute to these accounts during the marriage, the increase in the value of the retirement accounts during the marriage can be split equally by a judge.

### **Division of debts**

Marital debts are also subject to the presumption of a 50/50 split, regardless of who acquired the debt, whose name is on the debt, or what the debt was for.

In rare cases, a judge can decide it is not “just and proper” to make an 50/50 distribution of debts. For example, if one spouse is disabled and not working, a judge may order the spouse that is still able to earn money to pay all the debts.

### ***Complications with dividing debts***

The main complicating factor with dividing debts is that debts are contracts that parties enter into with third-parties.

Even if a judge says the other party should pay a debt incurred by you while you were together, the prior contract you entered into for the debt still allows the creditor (car company, mortgage company, or credit card company) to seek payment from either one of you.

If the creditor is not paid by the other party, the creditor can file a lawsuit against you, the other party, or both of you, for the unpaid amount. If this happens, you may be able to get reimbursement from the other party by filing your own lawsuit against the other party. This can be very complicated, and you should seek the advice of a lawyer if you run into this situation.