

GUIDE TO PROPERTY DIVISION IN DIVORCE



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Going through a Divorce is not easy. Don't do it alone – Read more to learn what to expect when dividing property in a divorce in Illinois, and how to choose the right Divorce Attorney for you.

GUIDE TO PROPERTY DIVISION IN DIVORCE

Because failing to plan, is planning to fail. Know your rights, and get the Divorce Settlement that you Deserve with the Results you Desire.

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GUIDE TO PROPERTY DIVISION IN DIVORCE

Property division in an Illinois divorce involves separating the assets and the debt acquired during the marriage. While this may sound like a simple process, it is almost always complicated by emotions and disagreements. Determining the overall equity of all assets and debts from your marriage affects every area of your divorce.

EQUITABLE DISTRIBUTION IN ILLINOIS DIVORCE

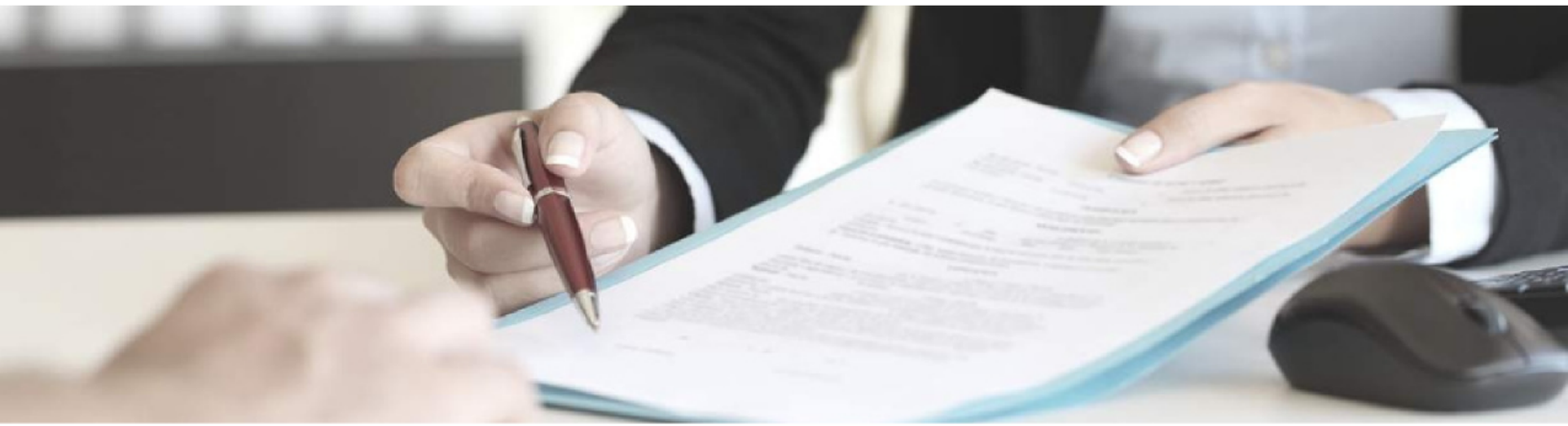
Different states have different methods to determine property division when two parties decide to divorce. Some states, such as “Community Property” states, divide the parties’ assets 50/50, no matter what. Illinois is not one of those states. Illinois is what is called an “**Equitable Distribution**” state. This means the property is not necessarily divided equally between the spouses but is divided equitably or fairly as determined by an Illinois family law judge or by the agreement of the spouse.

What is Considered "Property" in Divorce

When you hear the word "property" you may think of real estate and land. That is correct and those are considered "real property" in the legal world. However, there is also "personal property," which is everything that is not considered real property.

The typical examples of personal property involved in divorce include:





How Is Property Classified in Divorce?

In an Illinois divorce, property is classified as “marital” or “non-marital”. However, things get complicated in divorce because some property can have both marital and non-marital elements, falling under the classification of “mixed” property.

WHAT IS CONSIDERED MARITAL PROPERTY?

Generally speaking, any property you and your spouse acquired during the marriage is considered **marital property**. It does not matter whose name is on a title or an account.

WHAT IS CONSIDERED NON-MARITAL PROPERTY?

Non-marital property (sometimes referred to as “separate property”) is property usually acquired by you or your spouse before the marriage. Basically, anything you buy up until you say, “I do.” There are circumstances after marriage where a spouse could acquire non-marital property if it’s acquired by gift or inheritance or excluded by a valid

agreement such as a prenuptial agreement.

WHAT IS CONSIDERED MIXED PROPERTY?

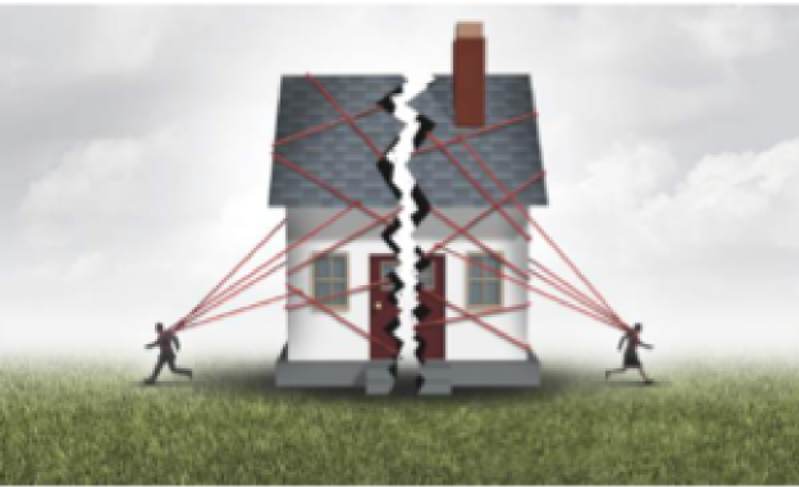
There is divorce property that is considered “**mixed property**” which means the property has characteristics of both marital and non-marital property. Retirement accounts are a good example of a property with potential marital and non-marital elements. If a party contributed to their retirement prior to the marriage, then that money is deemed non-marital. However, the contributions made to the retirement account from the date of marriage to the date of dissolution are considered marital property.



Separating Your Assets and Debts

Be prepared to produce a written statement of all assets, including when it was purchased and if it was purchased with marital funds. Regardless of who earned the most money during the marriage, assets that were acquired throughout the marriage are considered to be marital property unless specifically excluded by a prenuptial agreement, or excluded as an inheritance or a gift.

Illinois law dictates that all marital property, assets, and debts, be divided “equitably,” not “equally.”. This is not the same in every state. To determine what is equitable, the contribution that each party made to acquire the property is considered, in addition to the financial circumstances and the likelihood of each spouse to acquire assets in the future.



ASSETS TO BE DIVIDED

Real Estate

Dividing the family home is not a simple process. The name in which property is held doesn't determine whether it is marital or non-marital property. Regardless of whether the title is held individually or by the spouses in some form of co-ownership most property acquired during the marriage is considered marital property and both spouses have an interest in it. If your house qualifies as "marital property," then it is subject to equitable distribution by the court.

However, if your spouse purchased the property prior to the marriage or with non-marital funds, it is likely that the house will not be considered marital. You may, nevertheless, be entitled to contribution if you invested monetarily in the home.

If you and your spouse cannot come to an agreement, the judge will make the decision. It must be decided if one party will stay in the home, and if so how to separate the equity. The property will be divided legally upon judgment, although provisions can be made to allow for payments to be made over time. Try to locate any prior appraisals on all properties owned.

Vehicles

Vehicles include all Automobiles in the family, Recreational Vehicles (RVs), Boats and Motorcycles, etc. Vehicles are considered marital property unless previously specified otherwise. Make a list of all vehicles and don't forget any recreational vehicles. List the vehicle's year, make and model, the date and amount of purchase, and any outstanding debt against the vehicle.



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Bank Accounts

Bank accounts include balances in savings, checking and money market accounts. Balances in cash accounts are considered marital funds and are subject to an equitable division of assets. If you fear that your spouse will clean out any joint accounts, protect yourself and move half of the funds into a new account in your name alone. Disclose that you have done this, and do not spend the money foolishly. If you are not comfortable with your spouse having control of cash accounts, speak with your attorney about freezing the accounts.



Furniture

Unless inherited or specified otherwise, furniture is considered marital assets. Coming to an agreement with your spouse about who is going to keep what is often very helpful to avoid ongoing bickering about items in the household. Speak with your attorney about items that you are unable to agree upon.

Investments & Retirement Accounts

Keep track of the purchase date and present value of any investments. Any value in investments, including 401k and retirement accounts, are usually considered marital assets subject to division. Oftentimes your pension, 401(k), or retirement account requires a Qualified Domestic Relations (QDRO) to equitably divide the plan between you and your spouse.

There are very specific rules that apply to retirement accounts when divorcing in the state of Illinois. Make sure that you understand the procedures, and tax implications when dividing retirement income. Learn the following tips related to dividing a retirement account:

- *Wait until the divorce is final to make a transfer or you may face a 10% penalty for early withdrawal*
- *Divide any retirement account as a percentage, rather than a dollar value. This provides an equitable division if investment values swing with the market*
- *Make sure the divorce decree clearly stipulates the division of the 401k or retirement account*
- *Be sure to update the beneficiary of any forms with your employer or institution*



Pensions

Dividing pension plans is different than other retirement and investment accounts. Pensions are defined benefit accounts – which means there is not a specific account with your name on it detailing what you have contributed. The value of a pension typically involves many factors, including but not limited to the length of the spouse’s employment with the employer.

Typically, dividing a pension plan in Illinois involves either a “Qualified Domestic Relations Order” (QDRO) or a “Qualified Illinois Domestic Relations Order” QILDRO for public retirement systems, like for the police officers and teachers. A QILDRO is used when you have an Illinois State or municipality plan such as SURS, TRS or Chicago Public School pension. QDRO applies to only plans subject to

ERISA – local state and municipal plans are not subject to ERISA so we use QILDRO.

Keep good records of all expenditures so you explain exactly what you spent money on as you do have a duty to account for monies spent. Failure to adequately explain what money was spent on can lead to "dissipation", a term used in court to describe a wasting of marital funds. Marital debt is divided considering who is more financially able to pay the debt, not necessarily by which name the debt is in.

Also not covered by ERISA are Military pensions, civil service retirement, Federal employees retirement system, thrift savings plan, and most deferred compensation plans. Each QILDRO or QDRO needs to follow the specific rules of the plan administrator in order to be “qualified”.



The QDRO and QILDRO are set at the time the divorce is finalized and serves the purpose of notifying the pension plan administrator that there is a share of the pension plan that belongs to a spouse.

Usually a Calculation Order must be entered by the Judge at the time of the participant's retirement so that the pension plan knows how much to pay the now ex-spouse. This means if a share of your spouse's pension account will be awarded to you in a divorce, you will need to seek legal input when your ex-spouse is ready to retire.

Inheritances

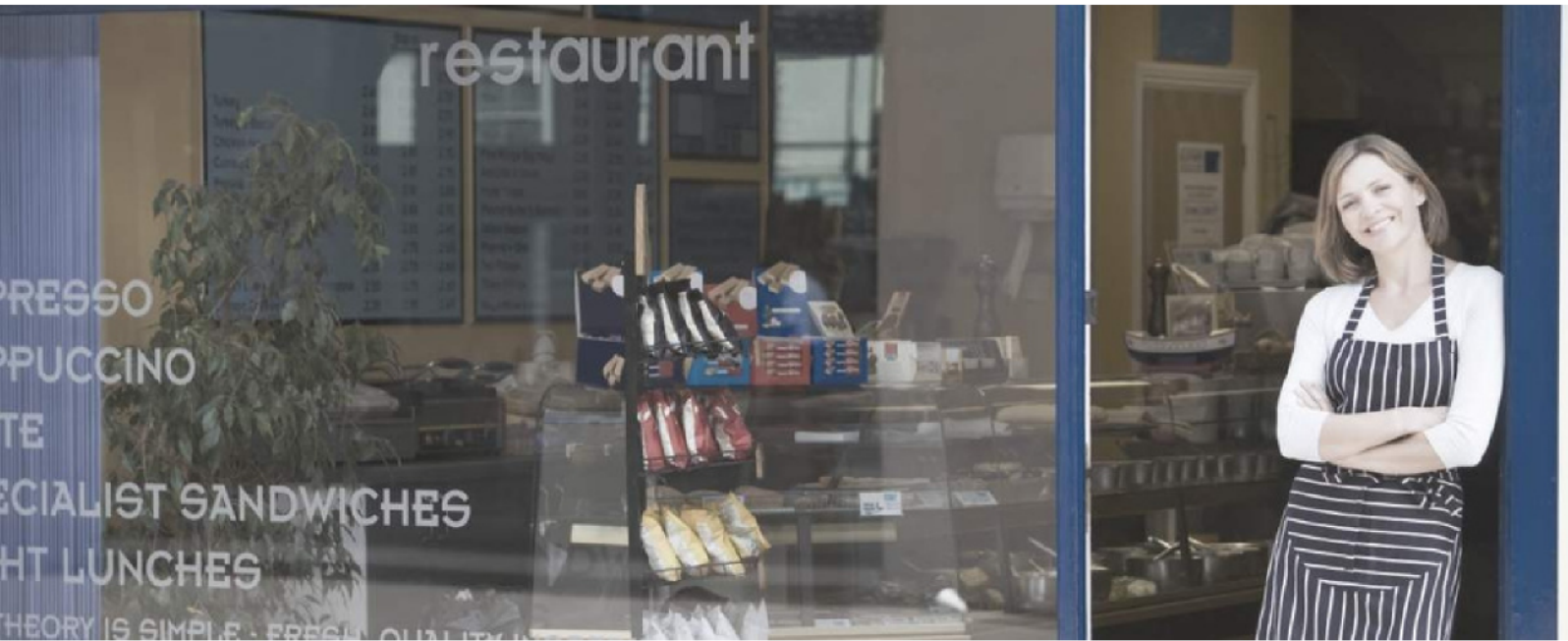
Determining whether an inheritance is considered marital or non-marital property is the key in how (or if)

an inheritance is divided during a divorce. An inheritance is typically considered your non-marital property.

What you do with your inheritance after you receive it, can dictate if it will be considered marital or non-marital. If you place your inheritance in a joint bank account with your spouse you've created a gift to the marriage, and now your non-marital asset just became marital. You should consult with an attorney once you receive an inheritance to make sure you safeguard its characterization.

Artwork & Valuable Items

The clarification of marital property is the key in dividing any valuable items during a divorce. Items acquired during the marriage are most often considered marital property.



Business Interests

The clarification of marital property is the key in dividing any valuable items during a divorce. Items acquired during the marriage are most often considered marital property.

For one thing, if the business is started during the marriage using marital funds unless there is a post-marital agreement specifying the business is “non-marital”, it is very likely the business will be subject to division as marital property.

There are many different types of businesses that a person can own, and the type of business can impact property division. For example, closely held businesses where the owner essentially is the business is seen by Illinois courts as having “goodwill”.

Goodwill under Illinois law refers to the ability of a person to run a company based upon the personal reputation they've built up with the business.

This does not mean that the spouse in a marriage (where a marital business is operating by a lot of goodwill) won't receive anything. The assets of the business still have value. For example, at a Dr.'s office, the medical equipment, phones, computers, etc. all have a value that is subject to being divided in a divorce. But, keep in mind, business valuations are very specific to each individual business. If you're facing divorce and business interests are involved in the property division it is critical to get legal advice from a highly-experience divorce attorney.

Pets

If a pet is an important part of your family and divorce is on the horizon, you should speak with a pet custody attorney to learn your rights as newly defined in the Illinois legislature.

Illinois law provides detailed guidelines for the possession and allocation of responsibility of companion animals owned jointly by a divorcing couple. The law most commonly refers to the family dog but also pertains to all companion

animals including cats and horses. This can get especially complicated for animals with a high monetary value such as show dogs and cats or racehorses.

Companion animals are still referred to as assets, although the court now takes into consideration what is in the best welfare of the animal. This assessment is quite different than the way all other assets are treated during property division.





Dividing Debts

DETAIL ALL DEBT FOR BOTH PARTIES

Make a list of all debt owed for both spouses, whether or not the debt is in your name. Write down the name of the debtor, the balance owed, and who pays the bill. Obtain statements of all debt accounts and make copies for your attorney. Marital debt is divided considering who is more financially able to pay the debt, not necessarily by which name the debt is in.

OBTAIN A COPY OF YOUR CREDIT REPORT

If you find that you do not have any credit in your own name, you should establish credit as soon as possible. Open a credit card in your name alone and use sparingly, only what you can pay off each month. The goal is to establish a good credit score, not increase your debt.

KEEP MAKING PAYMENTS ON ALL DEBT

Continue to make payments on any debt you have been paying. Don't let divorce proceedings ruin your credit. Even if you only make the minimum payment it will be worth keeping your credit score up.

What If We Agree on the Division of Assets & Debts?

Divorcing couples are free to make their own agreements regarding the allocation of their assets and debts. The Illinois courts will enter a marital settlement agreement, as long as its terms are not considered unconscionable. If a divorcing couple is unable to come to an agreement about allocating divorce property and debts, the Illinois family court will set the matter for trial. At that point, a judge will look make the decision after looking at the evidence presented and weighing a variety of different factors.

Understanding the law regarding the division of the assets and debts is vital to obtaining the divorce settlement you deserve. An experienced family law firm can make sure your interests are protected and you keep the property and equity that you are entitled to.





WHY ANDERSON BOBACK & MARSHALL

Anderson, Boback & Marshall is a law firm of highly respected attorneys experienced in Illinois family law. We are skilled at negotiation and litigation. You are not just a case, you're a person. We understand the fears and questions that you have, we are specializing in bringing understanding and certainty to what can be a chaotic and uncertain time.

We concentrate in:

- Divorce
- Adoptions
- Child Support
- Child Custody/Allocation Agreements
- Prenuptial Agreements

You can have confidence in our decades of experience and expertise with divorce and family law. Kimberly Anderson, Janice Boback, and Jessica Marshall are attorneys with expertise in the many facets of Family Law in Illinois.

Our team concentrates in child custody and other child-related issues including adoption, as well as having extensive knowledge in finance and division of marital assets. Our attorneys often serve as child representatives throughout Chicago and Cook County.

The lawyers at *Anderson Boback & Marshall* know how emotionally draining and stressful it is to go through a divorce, child custody dispute, adoption process, and many more family related matters. Our law firm keeps an open line of communication with each and every client at all times. When you need an advocate to represent your rights and best interests, fighting for what you are entitled to, contact *Anderson Boback & Marshall* - the only call you need to make when you need the right divorce attorney in Illinois.

To book a confidential consultation,
please call (312) 715-0870
or visit our website at illinoislawforyou.com
to request an appointment.

NOTICE: Each individual person's case has unique facts and circumstances. Therefore, the information provided in Anderson Boback & Marshall's *Guid to Property Division in Divorce* is general information and is not a substitute for legal advice from an attorney. The information contained in this Guide does not constitute legal advice nor is it intended to be legal advice. If you have a need for legal advice, please consult with an attorney.