



Guide to Financial Assets in a Divorce:

The House, 401(k), Roth IRA, Stocks and More



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Every divorce triggers a lot of unknowns. Even for relatively short marriages, a divorce is a major life change. One of the biggest unknowns and a source of stress for most people facing a divorce is understanding what will happen to financial assets both before and after the final divorce decree has been issued.

The short answer is that the couple's assets and liabilities will be divided. Wisconsin is a community property state, which means courts handling divorce matters start with an assumption that the assets and debts will be evenly divided, with one-half going to each spouse. However, the division is not always as clean-cut as simply splitting accounts in two. Your [divorce attorney](#) will play an important role in protecting your best interest and helping ensure the division of assets and liabilities is fair.

In this guide, we will explore Wisconsin's community property law, examine the factors courts consider when making decisions about dividing assets and liabilities, and provide general information about possible outcomes for various types of assets and liabilities.



Understanding Wisconsin's Community Property Law

To understand how Wisconsin law affects the division of your assets and liabilities in a divorce, it's helpful to first define what falls into the category of "community property."

The definition is broad, encompassing the couple's real property (real estate), motor vehicles, financial assets, tangible personal property and the income that either spouse earned during the marriage. With limited exceptions, it is irrelevant how the assets are actually titled. Even property titled solely in one spouse's name will be deemed community property unless the property was inherited by one spouse alone during the marriage, or was gifted to one spouse alone. In some cases, inherited or gifted property can still be deemed community property, such as in a situation where the court feels treating the asset as separate property would create a hardship on the other party, or on the couple's children.¹

Assets acquired, and debts incurred prior to the marriage may retain their separate character in certain circumstances. However, such separate (nonmarital) property can also be deemed marital property if the asset was acquired or improved with marital assets.

Sometimes divorcing couples assume assets and liabilities will be divided equitably, however that's not the case in Wisconsin. Family law is state-specific; while many other states follow a fair or equitable property division which is standard for divorce, community property law will apply to Wisconsin divorces and courts will seek to divide marital assets and liabilities *equally*.

¹ WI Statute 767.61(2)(b) <http://docs.legis.wisconsin.gov/statutes/statutes/767/VII/61>

What Wisconsin Courts Consider When Evaluating Property Divisions in Divorce Actions

As stated previously, Wisconsin courts start with a presumption that a couple's assets and liabilities will be split evenly in a divorce. However, courts may deviate from the 50/50 split.

When evaluating how to make a fair and proper division of property and finances, the courts will consider these factors:

- How long did the marriage last?
- What property or other assets did each spouse bring into the marriage?
- Does either spouse have separate (non-marital) property?
- How has each spouse contributed to the marriage and to the earning power of the other? If one spouse stayed at home with the children so the other could advance his or her career or education, the courts may attribute value to that decision.
- What is each spouse's earning capacity?
- How old are the spouses, and how is their general physical and emotional health?
- Is there a valid prenuptial agreement in place? Wisconsin courts will generally uphold prenuptial agreements that were validly entered into and executed.
- If there are minor children, the court may consider awarding the family home to the parent who will have primary placement.

Courts also consider whether one spouse was attempting to hide assets that would have otherwise been subject to division. Assets given away, sold for inadequate compensation or are otherwise unaccounted for within one year before an action for divorce was commenced (or the length of the marriage, if less than one year), will be considered part of the couple's assets, subject to division.¹

¹ WI Statute 767.63 <http://docs.legis.wisconsin.gov/statutes/statutes/767/VII/63>

In some cases, divorcing spouses attempt to delay compensation or reduce their retirement plan contributions until after the divorce is over, in an attempt to obtain a better share when the couple's assets are distributed. In other cases, spouses try to move money into separate bank or investment accounts hidden from their spouse, or use their children's bank accounts to keep their assets out of sight.

If you have concerns your spouse may try to use one or more of these underhanded tactics, your divorce attorney can help. Using the discovery process and retaining private investigators can also help uncover any assets your spouse is attempting to shelter.

How Common Assets May be Handled in Wisconsin Divorce Proceedings

Dividing assets in a Wisconsin divorce matter sometimes means splitting the account or property evenly, with one-half awarded to each spouse. However, there are other potential ways of dividing assets too.

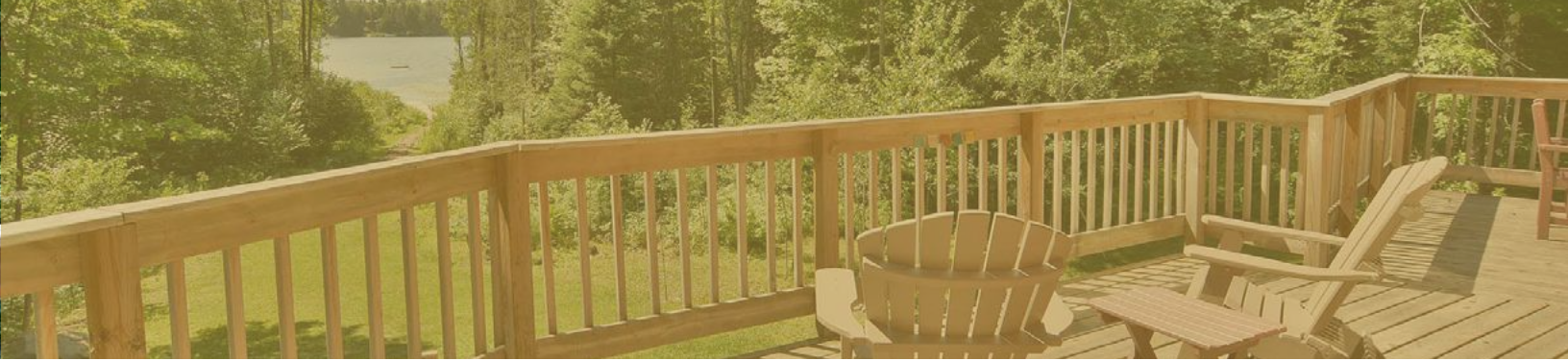
Here are possible scenarios for various types of assets:

Marital Home

A couple's home is often their largest asset. It also often comes with a host of emotions and memories liable to make the stakes that much higher during a divorce. There are several potential outcomes for the marital home.

The spouses might agree together to sell the property and divide the proceeds. This decision can come with additional costs and other potential disadvantages; if the real estate market isn't optimal at the time a decision is made to put the house on the market, substantial value might be sacrificed by taking this approach.

Another common solution is for one spouse to buy out the other, giving up his or her share of other assets in exchange for the house. A divorcing couple may also agree that one spouse will make payments to the other for a period of time, or that one spouse would waive some or all of his or her right to receive spousal maintenance (alimony) in order to obtain the house.



In rare cases, divorcing couples decide to continue co-owning the marital home with an intention to sell later. Even in a non-contentious divorce, this approach comes with risks, binding the spouses' finances together until the property is ultimately disposed of. However, there may be situations where this is the best option.

Vacation or Rental Property

Generally speaking, couples face the same options and decisions when it comes to dividing a vacation property or rental property.

Vehicles

Because it's not practical for a divorced couple to co-own motor vehicles, cars, trucks, campers, snowmobiles and other vehicles generally become the property of one party or the other.

Fair market value must be determined, and any outstanding debt on the vehicle must be considered when determining how vehicles fit into a property settlement.

Tangible Personal Property

Household goods including furniture, dishes, jewelry, décor, electronics and other items of tangible personal property also need to be divided in a divorce.

Creating and using an inventory list can be a smart way to keep track of all of your personal property, and of who is receiving what. It can be frustrating to have to work out the details of the personal property division with your soon-to-be ex-spouse, especially if your divorce is contentious. However, to the extent you can, you should try to keep attorneys out of this level of property division because it usually doesn't make economic sense to involve them. Courts generally do not want to be involved in having to decide or hear about divorcing couples' personal property disagreements.

Financial Accounts

When it comes to your financial assets such as bank accounts and taxable investment accounts, the presumption again is they will be evenly split. As discussed earlier, a divorcing couple may agree on an unequal split of these types of assets to make up for decisions about other assets, such as one spouse buying out the other's share of the marital home.

Your financial accounts could be valued based on the date of your separation, however this approach may be less desirable than simply dividing the accounts into two separate, equal accounts.

Remember it typically does not matter whether the accounts are titled jointly or individually; if they otherwise fall under the definition of community property assets, they are subject to division in a divorce.

Retirement Accounts

Decisions about dividing your 401(k), 403(b), IRA, Roth IRA and other qualified retirement accounts will also need to be made during the settlement negotiation process. Even though the accounts are in your name and your spouse's names as individuals, they are likely going to be considered community property.

You and your spouse may decide to agree you will keep your respective retirement accounts and equalize the division of assets by using an unequal division of other marital assets. You may instead decide to divide one or more of the retirement accounts.

In the case of pension plans, it may be necessary to involve an actuary who can determine the value of the underlying assets. In certain cases, you will need to obtain a Qualified Domestic Relations Order ("QDRO") to enforce the division decision regarding a retirement account. A QDRO is a separate judicial order in addition to your divorce decree.

Deferred Compensation

Because community property encompasses income as well as assets, you and your spouse may also need to agree on how deferred compensation such as stock options or performance-based compensation (bonuses) will be divided. If you are unable to agree on the division, the court will make this determination for you, starting with the presumption that an equal split is appropriate.



Division of Marital Debt

While the division of real estate and financial assets gets a lot of attention, it's just as important to plan for how debt accumulated during the marriage will be divided.

When possible, paying off outstanding debt completely is the cleanest way to eliminate it. Of course, doing so is not always possible or practical.

Divorcing spouses could choose to continue sharing the debt burden. However, doing so is a risky proposition and we don't recommend it.. If one former spouse becomes financially irresponsible or suffers a setback and is suddenly unable to continue making payments, the other former spouse will be responsible.

Better options include dividing debt equally, or deciding that one spouse will assume more of the debt but will receive an offsetting amount of assets in exchange for doing so.

In some cases, a divorcing couple's debt burden is so great that declaring bankruptcy is their best option.



Leveraging Your Divorce Attorney's Knowledge and Experience

As you can see, dividing assets and liabilities in a divorce proceeding is not often clear-cut or easy. Your divorce attorney will play a key role in helping protect your rights and interests, helping you evaluate options and important considerations.

To learn more about how the experienced, skilled family law attorneys at Schott, Bublitz & Engel, S.C. work to help clients receive fair property settlements, call us today at 262.827.1700.

About the Author



Attorney AnnMarie M. Sylla focuses her practice on representing clients across southeastern Wisconsin in litigation and family law including complex cases involving divorce, paternity, modifications of child custody and placement, child support and maintenance disputes. Attorney Sylla is known for her passion in fighting for her clients' interests.



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