

# Divorce Courts Divide Assets and Liabilities Equitably

You are considering ending your marriage, and you wonder what a divorce court would do to divide your assets and liabilities. Ohio law provides rules for how this should be done.

## **Q: How does an Ohio court divide assets?**

**A:** Each state has its own laws regarding the division of assets in a divorce case. The basic rule, according to Ohio law, is that all assets accumulated during the marriage, by either spouse's efforts, are considered to be marital, and are to be divided "equitably" between the parties. The exception to this law is if the parties signed a pre-marital agreement.

"During the marriage" is generally defined in Ohio to be from the date of the ceremonial marriage until the date the court terminated the marriage. There are cases, though, where a court has found that the marriage ended at an earlier date, such as when the parties separated.

While the statute instructs the courts to divide the marital assets "equitably" between the parties, in almost all divorce cases, the court interprets this to mean "equally."

It does not matter to the court which spouse owns an asset. Therefore, for instance, all funds contributed into pension accounts during the marriage are considered "marital" and are equally divided.

## **Q: Does a court always divide the assets equally?**

**A:** No. If there has been financial misconduct, the court may divide the assets unequally, in order to appropriately compensate the harmed spouse. Financial misconduct has generally been determined by courts to occur in the following instances: 1) significant loss of monies as a result of gambling; 2) purchase of illegal substances such as drugs; 3) using the monies to entertain or purchase gifts for a lover; and 4) failure to disclose an asset in a divorce court proceeding. A spouse who is arguing that he or she should be compensated for the misuse of the monies must provide evidence of specifically how much money was misused in order to be reimbursed one-half of the amount proven to have been misused.

## **Q: Are there any assets that are considered "non-marital" in Ohio?**

**A:** Yes. Ohio law recognizes that there are non-marital assets, which belong only to the owner and not to both spouses. These assets fall into one of three categories: 1) assets owned before the marriage, such as a house, pension funds, and furnishings; 2) gifts made to one of the spouses; and 3) inheritances. There is a fourth category that Ohio courts have recognized as a non-marital asset: personal injury proceeds that compensated an injured spouse for pain and suffering.

However, the court's basic presumption is that all assets are marital unless a spouse can document and trace through a claim that an existing asset is "non-marital." The tracing is best done by a paper trail. Whether a judge believes a spouse's oral testimony only, without any paper trail of evidence, is up to that judge.

Tracing non-marital assets frequently becomes difficult. For instance, it is not unusual for a spouse to own a house before marriage, and for that property to subsequently be sold and the proceeds used toward the down payment of a marital residence. Ohio courts will recognize the pre-marital portion of the down payment, and award those monies to that owner from the equity in the current marital residence. However, sometimes it is hard for a party to prove what amount of equity was in the house at the time of the marriage. ("Equity" is the difference between the fair market value of the house minus the mortgage balance.)

**Q: How does a court divide marital debt?**

**A:** While Ohio law lays out the basic law of property division, it is silent about debt division. Each judge handles the issue of marital debts on a case-by-case basis. This means that the judge might divide the current debts one of four ways: 1) equally; 2) proportionate to income; 3) assigning the debt to the account owner; or 4) assigning the debt to the person who incurred or caused the debt. As you can imagine, this leads to many battles over how the debts are to be divided and paid.

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*This "Law You Can Use" column was provided by the Ohio State Bar Association (OSBA). It was prepared by Columbus attorney Heather G. Sowald of Sowald, Sowald, Anderson & Hawley.*

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