

What Property Is and Isn't Subject to Division in a Divorce

Most property is divided in a divorce

In Wisconsin, when a couple divorces, the process includes dividing everything they own, even things one person brought into the marriage. The property that can be divided includes houses, cars, furniture, clothing, money in the bank, retirement plans, pensions, stocks, and businesses—basically, anything that the spouses own at the time of the divorce.

Some individual property is not divided

But there are a few cases where this might not apply. If one spouse gets property because someone died, like an inheritance or life insurance money, OR if they receive a gift from someone other than their spouse, those are sometimes kept separate when splitting things in a divorce.

Proof required for separate property

Origin of property

If you want to keep certain property separate from what's divided in a divorce, you must show proof that the property was originally your separate property, like from a gift or inheritance.

Separation of property

If you want to keep certain property separate from what's divided in a divorce, you must show proof that the property was kept separate during the marriage. For example, if you inherit money and put it into you and your spouse's joint bank account, it's no longer seen as separate property because it's mixed with money

both spouses share in the account.

Value of property

When keeping property separate in a divorce, you'll have to prove its value when you got it and its value at the time of the divorce. If the separate property is worth more when you divorce than when you got it, the court will need to figure out why it's worth more now. Most importantly, the court will want to know if your spouse had a hand in making that increase happen.

Say you got a house as a gift or inheritance. If it's worth more now because of the economy and housing market, it's probably still separate property. But if your spouse can show they contributed to its value, like doing major renovations or providing funding for maintenance, some or all of it might be considered shared property.

Overall

As you might guess, proving where property came from, that it was kept separate, and figuring out its value over time could require finding old documents to support your claim that property should not be divided in a divorce.

Money made from separate property might be divisible

Sometimes, even if you keep your inheritances or gifts separate, any money you make from them might still be divided with your spouse during the divorce. For example, let's say one spouse inherits a house and rents it out. They keep the house separate, but put the rent money into the couple's joint bank account. In a divorce, the inherited house itself might be seen as separate and not split up, but the money earned from it will be divided. Once the rent goes into the joint bank account, it's considered shared property.

Financial Hardship

Lastly, if the judge thinks it would be a financial hardship for one spouse to leave out the inheritances or gifts of the other spouse from the total value of what will be divided, the judge can decide to count its value in the shared property. So, if one

spouse would struggle financially without it, the judge might add its value to what's being divided. While the judge might include the value of the property, the inheritance or gift itself remains with the original owner. So if you inherit a house, and the judge decides to include its value when splitting the property in the divorce because your spouse would suffer otherwise, the house itself would remain with you.

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