

## Property Division

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#### Family Law and Divorce

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- Prenuptial Agreements
- Property Division
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- Restraining Orders
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In Family Court, the Judge will make a decision as to what is a fair and equitable division of assets and debts. This is commonly referred to as a property division and/or equitable apportionment of the marital estate.

Generally speaking, the “marital estate” includes all assets that were acquired during the marriage unless the assets were inherited and/or gifted by a third party and kept separate and apart.

### What Can Be “Split” In Property Division During Divorce?

The following is a list of typical property subject to division in **divorce** cases:

- The marital home
- Retirement accounts
- A spouse’s business
- Brokerage accounts
- Stock options
- Personal property
- Rental properties
- Military retirement benefits

While the above list contains the most common assets of parties, the Judge must consider any other property acquired during the marriage as well in dividing up the marital estate.

### Can My Spouse Get My Inheritance?

The short answer is No. Inherited property that is kept separate is deemed to be “non-marital” property, which cannot be divided by the Court. A more contested issue is what occurs when a spouse uses inherited funds and uses it to buy something, such as a marital home, which is then titled jointly. Under such circumstances, the Family Court will look at the legal theory called transmutation of non-marital property into marital property. This is an often disputed issue in property division cases that complicates matters. Even if non-marital property is transmuted, this may be offset by seeking a different percentage split of the overall marital estate.

### Will Marital Property Always Be Divided 50/50?

No. A division of the marital estate does not automatically mean a 50/50 division of all assets, although this is often what does occur in long-term marriages. There are several factors which

affect the percentage of property allocated to each party, including:

- Duration of marriage
- Contributions of each spouse during the marriage
- Marital misconduct if it has contributed to the break-up of the marriage or affected economic circumstances of the parties
- Income of each spouse and/or potential earning income of each spouse
- The health, both physical and emotional, of each spouse
- Whether alimony has been awarded in the case
- The existence or non-existence of invested retirement benefits
- Tax consequences to each party
- Liens, debts and other encumbrances
- Child custody arrangements (which can affect the division of the marital home)
- Other relevant factors
- Did one spouse bring substantial non-marital property into the marriage

Property divisions can be very complex or relatively simple, depending on the type and amount of assets acquired during the marriage.

### How Are Debts Divided During Divorce?

Debts are also considered in a property division case. Generally speaking, debts acquired during the marriage in furtherance of the marriage are considered marital debts subject to division and allocation. Settlement agreements need to be handled carefully, because a common concern of one or both parties is the capacity of the other party to pay such debt without harming the credit of the other spouse. The details of any settlement on a division of debt is extremely important to our clients at Rosen Hagood.

Although equitable apportionment is not taxable, the tax impact of capital gains and/or carry-forward losses can play an important role in deciding how to divide property and/or reach a settlement agreement. Tangent to this, stock options and rental properties involve a more careful analysis in a property division case.

### How Do You Value a Business?

**Business Valuation** can be a very important part of your case in order to assess the value of what is to be divided. This could include a valuation of a closely held family business or other business interests of a spouse. Whether or not the business is a professional practice, a closely held family business, or a larger company can and will affect the valuation process. If a valuation is necessary or there are material tax implications, we will often recommend that you hire a forensic accountant to help in the process as they can often simplify things and help you

understand the full extent of the tax ramifications and how to best attempt to settle a property division or debt division.

### Is Property Division Final?

Yes. Once an order of property division has been awarded or issued by the Court, the order is final and cannot be changed at a later date. The only way it can be changed is if you proceed with a timely appeal of the order with the South Carolina Appellate Courts. Accordingly, it is very important that Rosen Hagood attorneys assist you from the start in carefully evaluating the entire marital estate and identifying any non-marital property to help you evaluate your comprehensive financial condition for purposes of property and debt division.