

Arizona Property Division

Property Distribution Laws in Arizona

In Arizona, the courts generally accept a fair and reasonable property division the parties agree to, but if the parties cannot agree, the Superior Court divides the marital estate within the Judgment of Divorce.

Arizona is one of the nine community property states in the United States. Community property is a principal of Spanish law and the states that are community property states were part of the old Spanish empire.

In a Community Property state, the Superior Court divides all property and debt equally for the divorcing spouses who cannot do it for themselves. Subject to division is all the property that they acquired from the date of marriage until the filing date.

The court does not consider marital misconduct. It divides the community, joint tenancy and other property held in common equitably, though not necessarily in kind.

With certain qualifications, Arizona considers separate property acquired outside the state to be community property. That means the property that would have been community property had it been acquired in Arizona.

Certain community debts may be assigned to one spouse, but the court order binds the spouses only. This assignment does not necessarily relieve either of them of their obligation for community debts. Community debts are matters of contract between both spouses and their creditors. Creditors are not parties of a divorce case, so they are not bound by court orders or any spousal agreements. The creditors may request that the court lien the separate property of one spouse to secure payment of debts that the court orders him or her to pay.

Creditors should be contacted and informed of the court-ordered disposition of debts.

Factors in Community Property Distribution

Community property means that the marriage is a community and that assets earned and liabilities incurred during the marriage are split fifty-fifty. Property earned prior to the marriage or gifted or inherited by one spouse is separate property and remains solely the property of that person.

Arizona is a no-fault state, which means that the court does not consider the conduct of spouses when dividing property. However, the court does consider economic misconduct. Community waste is called dissipation. Dissipation means, for example, that if the husband gambles away community money, the innocent wife should not be liable for those expenses and should be reimbursed for any waste.

Sometimes it is not easy to prove community waste, so the innocent spouse should file for divorce promptly and thus minimize his or her responsibility for the debts incurred by the other spouse.

Under Arizona law, filing and serving the other party with the divorce action severs the financial community, so debts incurred after the filing date belong to the spouse who incurred them.

Marital Property vs. Separate Property

Separate property is property owned by one spouse prior to the marriage. It includes property or businesses owned before marriage, gifts and inheritances, and pension proceeds that vested before marriage. Separate property remains the property of the party who owned it before the marriage, thus the term separate. Gifts and inheritance to one spouse during the marriage are also separate property. Unfortunately many spouses commingle their separate property with their spouse's and the property loses the protection of separate property and can be divided 50-50.

Property Defined

In community property law, both spouses own "an undivided share of the whole." Exceptions to this general principle include separate property. Because the Arizona courts start with a strong presumption that anything acquired during marriage is a community property, the partner claiming an asset is not part of the community has the burden of proving it.

Valuing Property

In Arizona, the value of property is set as of the date of separation.

The Marital Home

A marital home can be owned jointly, as tenants in common, or as community property with rights of survivorship, or even deeded in only one spouse's name. The marital home is usually divided 50-50. If one spouse wants to keep the home, he or she normally buys out the other spouse's share of the equity. A buyout usually means that the purchaser should refinance the home to remove the other spouse's name from the mortgage. If a home is deeded in only one spouse's name, the other spouse may still be entitled to a half share, or at the minimum some value based on a theory known as community lien.

Pensions and Retirement Accounts

Retirement plans like any other asset, can be either community or separate. It is not uncommon for a portion of a retirement plan to be earned prior to the marriage and thus part of the plan is separate and part community. The premarriage portion will be the separate and sole property of the spouse who earned it, and the portion accrued during the marriage will be split fifty-fifty. A special court order is needed to divide a retirement plan. This order is called a Qualified Domestic Relations Order or "QDRO."