

What happens to property in a divorce?

Put very simply, when a couple who live in New Mexico divorce, they keep their own “separate” property. They must divide their “community” property as equally and as fairly as possible.

What kinds of things are considered “property”?

Property includes things that you can touch and that you might use every day—dishes, food, furniture, clothing, televisions, video games, your children’s toys, books, your toothbrush, sheets and towels, your washer and dryer, your car, your house, your soap and shampoo, your jewelry and antiques, and your sneakers. These are all examples of “tangible” property.

Property includes things that are “intangible”, too--such as bank accounts, stocks, bonds, mutual funds, insurance policies, tax refunds, retirement funds and pensions, and your interest in a business.

While property can be tangible or intangible, how you got it and how you treated it once you got it will say whether the property is “separate” or “community”.

What is separate property?

Property is separate if it belongs to you alone—for example, if you get it when you are single or divorced. Even if you are married, you can get separate property if you receive property (including money) as a gift or an inheritance intended for you alone. A married person who receives a court award or settlement of money in a personal injury case gets the money as separate property. Veterans’ compensation that a married person receives because of a disability is separate property. A pension to which someone becomes entitled before marriage is separate property. A married couple can agree in writing that certain property will be the separate property of one of them. If a spouse uses his or her separate funds to buy things, those things are separate property.

It is possible for married people to change their separate property—which they usually are entitled to keep when they divorce—into community property, which they usually must share when they divorce. For example, a business owned by one spouse before the marriage remains that spouse’s separate property, but part of it may be considered community property if the business increased

in value during the marriage or if both spouses worked in the business.

As this example shows, separate property that is mixed with community property can become community property. It is not surprising that it can sometimes be very difficult to figure out if property is separate or community; getting legal advice about the status of your property can be very important.

What is community property?

Community property is any property acquired by either or both spouses during marriage that isn't separate property. For example, earnings of either spouse during marriage are community property. Things either spouse buys with those earnings, such as a car or furniture or a house, become community property. Even if the title to the car or house is in the name of only one spouse, it is still community property because payments came from the married couple's funds. Similarly, if one spouse takes separate funds and places them in a joint checking account, the funds will generally become community property unless the spouse can prove he or she did not intend to have the

funds used for the benefit of the family. Even property that the spouses get when they have separated and are living apart is community property in most cases. Only after the couple are legally single can they again call their property separate.

What if a divorcing couple used to live in a state that doesn't treat property from the marriage as community property?

The law in New Mexico will treat this property just as if it were community property, calling it "quasi-community" property.

Are debts treated the same way as property?

Yes, generally. Separate debt is debt one person incurs before marriage or after divorce. It can also be the debt of a married person that he or she tells a creditor in writing when incurring the debt that the debt is a separate debt. A spouse who commits a tort (such as injuring someone in a car crash) will be responsible for the debt as a separate debt. Gambling debt is separate debt. Sometimes when spouses have separated, one spouse will incur debts for things

that do not benefit the other spouse or the children. A court may find that it is unreasonable to treat these debts as community debt.

What is community debt?

Most debts incurred during marriage are community debts, even if only one spouse incurs them. For example, a mortgage on the family home or a car loan is community debt—even if only one spouse signed for the loan. So is a hospital bill for one of the spouses or one of the children.

As with community property, it can sometimes be difficult to figure out whether a debt is a separate debt or a community debt. Getting legal advice can help answer this question.

In a divorce, both spouses are equally responsible for community debts. They can agree on who will be responsible for certain debts, or a court will try to divide the debt evenly between them.

What happens to debts from the marriage if one or both spouses file for bankruptcy?

If one or both parties file for bankruptcy, community property

can be used to pay off debts. Bankruptcy does not end the duty to pay child support or spousal support (alimony). For more information about bankruptcy, see LawHelpNewMexico topic, “Bankruptcy”.

If there is a family home, how can a court divide it equally in a divorce?

The couple may decide, or a court may order them, to sell the home. If the couple has children, the parent who provides their primary care may get to remain in the family home until the children are grown; the former spouses may then sell the house and split the proceeds. If there are no children and the house belongs to only one spouse, that spouse has the legal right to ask the other to leave.

There are important tax questions related to how to “divide” the family home; most family law attorneys can explain those issues.