

Common Law Property vs. Community Property

Each state has its own laws regarding how property should be divided in a divorce. There are community property states which recognize most things as shared.

There are also common law property states, which recognize that some spouses may have more of a rightful claim to certain assets.

Here's what you need to know about common law property vs community property and how your state's property laws will impact your divorce.

What Is Considered Property in a Marriage?

When most people think of marital property, they think of their house and their cars. However, marital property includes a lot more than the big-ticket items. Although deciding who gets to keep the family home is often a major consideration during a divorce, it's merely one of many debates you'll need to settle.

Marital property also includes the furniture inside your home, any additional real estate you've purchased together, your pets, your investments, your retirement accounts, and your family business(es).

Property isn't limited to assets. It also includes debts you've acquired during your marriage. Debts can include business loans, personal loans, mortgages, student loans taken after marriage, credit cards, and outstanding bills to utility companies.

When you divide property, you're also dividing ownership of debts.

How Is Property Divided During a Divorce?

You need to gather a lot of paperwork and financial information when you [begin the process](#) of getting divorced. One of the most important steps of your divorce is preparing a thorough and accurate picture of all your assets, individually and together.

You won't share any assets after your divorce, and you need to be sure that every asset is accounted for before you begin dividing property.

Each state has its own laws regarding the fair division of property. There may be some exceptions, such as provisions agreed to in a [prenuptial agreement](#) or a [postnuptial agreement](#). Aside from any marital contracts you've signed, you're required to follow your state's laws for dividing property.

Your state will look at property in one of two ways: almost all property is shared if it's acquired during a marriage, or some property clearly belongs to only one spouse. All property will be divided accordingly during your divorce.

What Are Common Law Property Rules?

Common law property states — sometimes called separate property states — recognize that married people can maintain financial independence. While most married people combine their assets, some couples choose to manage some of their responsibilities on their own.

This is usually the case in marriages where both partners work or have separate incomes. They may choose to make purchases and investments or partake in business ventures on their own.

If one spouse buys a car for themselves, is the only owner on the car titles, makes their own car payments, and rarely shares the car with their other spouse, that car clearly only belongs to one person. It won't be divided with the other property during the divorce because the other spouse can't reasonably claim any ownership of the car.

Common Law Property States

Common law marriage is the most widely accepted method of division of a piece of property. Almost every state is exclusively a common law property state, and a few other states allow couples to opt into common law property division during their divorce.

Common Law States Include

- Alabama
- Alaska
- Arkansas
- Colorado
- Connecticut
- Delaware
- Florida
- Georgia
- Hawaii
- Illinois
- Indiana
- Iowa
- Kansas
- Kentucky
- Maine
- Maryland
- Massachusetts
- Michigan
- Minnesota
- Mississippi
- Missouri
- Montana
- Nebraska
- New Hampshire
- New Jersey
- New York
- North Carolina
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- Tennessee
- Utah
- Vermont
- Virginia
- West Virginia
- Wyoming

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What Are Community Property States?

Community property ownership has almost been completely phased out in terms of how couples own property. This method of property division made more sense in a landscape where one partner worked, and the other maintained the home and cared for the children.

In modern times, it's common for both partners to have an independent income and independent pieces of property. A few states have yet to transition from common law property to the community property system:

Community Law States Include

- Arizona
- Idaho
- Nevada
- Texas
- Wisconsin
- California
- Louisiana
- New Mexico
- Washington

California, Washington, and Nevada extend community property law to domestic partnerships. If you end a domestic partnership in these states, you're required to divide property according to community property guidelines.

Some states allow couples to choose to use community property when dividing assets in a divorce. Alaska, Tennessee, Kentucky, South Dakota, and Florida let couples choose how they want to handle property division. Voluntarily using community property law is most advantageous when neither person has a significant amount of individual property.

Are There Exceptions To Community Property Rules?

Community property states do allow for some exceptions. Property you owned before you were married doesn't become community property.

Assets like direct inheritances left specifically to one spouse also don't become community property. If you had a relative that passed away and left you a substantial amount of money or assets of significant value, it isn't assumed to belong to both people.

If you have a prenuptial agreement or a postnuptial agreement that specifically states how property should be divided in the event of a divorce, the agreement outweighs community property law.

If one spouse challenges the agreement, they can attempt to fight it in court. It's difficult to fight a prenuptial agreement but slightly easier to fight a postnuptial agreement. If they win their challenge, you'll revert to community property law when dividing your property. If they don't win, the prenuptial or postnuptial agreement will be enforced.

What Happens During a Property Division Dispute?

There are almost always disagreements during a divorce, even [when couples are divorcing amicably](#). You don't need to get family court involved with your disagreements if you're able to work them out on your own.

Many couples find [divorce mediation](#) to be a useful tool when they're making important decisions in relation to their bank account and assets.

An impartial mediator will listen to both parties and help them explore their options. The mediator will work with the couple until they both agree on outcomes.

When everyone agrees, the mediator will provide you with the information you need to draft the documents for [an uncontested divorce](#), including documents relating to the division of property. If mediation isn't an option or doesn't work for you, you'll each need to hire a separate family law attorney from a reputable law firm. You can choose to discuss the matter behind closed doors with your attorney and reach a conclusion without involving the court.

The last resort is a [divorce trial](#). A divorce trial is only necessary in [a contested divorce](#), in which both parties strongly disagree on at least one major issue. Each couple's attorney will advocate for them in court. Final decisions are ultimately made by a judge, and the couple will have to abide by the judge's ruling.

When the situation escalates to this point, there's a significant chance that neither couple will be happy with the outcome of their divorce. You may be able to appeal the ruling, but challenging the court requires even more time, money, and stressful debate.

It's best to avoid allowing the situation to build without compromise.

The Final Word on Common Law Property vs Community Property Jurisdictions

How you divide your property during a divorce heavily depends on your state's laws and whether or not you have a prenuptial or postnuptial agreement in place.

Although an increasing number of couples are opting for prenuptial agreements, the majority of couples will get married without one. The majority of couples will ultimately use common law property division in their divorce.