

# DIVIDING DEBTS AND ASSETS IN A TENNESSEE DIVORCE

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When a marriage comes to an end the couple must legally end the union through the process of divorce. One purpose of the divorce process is to legally separate the assets and debts of the parties. Whether a couple has relatively few debts and assets or extremely valuable assets and significant debts the division of those debts and assets can be contentious. Given the unique nature of a divorce, only an experienced Tennessee family law attorney can provide you with specific advice and guidance with regard to how your assets and debts are likely to be divided in a divorce; however, if you are contemplating divorce it may help to have an overall idea of how assets and debts are divided in a Tennessee divorce.

## The Divorce Process Basics



In the State of Tennessee the divorce process begins when one party files a Complaint for Divorce. The Complaint provides basic information about the parties, marriage, and separation as well as asks the court to grant the divorce along with other specific relief. The Complaint and Summons are then served on the other party who has a limited amount of time within which to file an official Answer and/or Counter-Complaint. At that point the parties have the opportunity to reach an agreement that resolves all issues in the divorce, including the division of marital debts and assets. If the parties cannot reach an agreement the Discovery process begins.

During Discovery the parties must share relevant information with each other through the use of Discovery tools such as Interrogatories, Requests for Production of Documents, and Depositions. Once again the parties usually try to reach an agreement after Discovery is complete. Ultimately, if an agreement regarding any issues, including the division of assets and debts, is not forthcoming the case will go to trial where a judge or jury will decide how the debts and assets are divided.

## What Is Property?

People often fail to realize how broad the definition of “property” is as it relates to a divorce. Property is broadly defined as anything of value and/or anything that can be bought or sold. Property can be tangible or intangible, personal or real, and may include, but is not limited to:

- Marital residence and/or vacation homes
- Investment property
- Bank accounts
- Investment accounts
- Vehicles
- Boats, planes, recreational vehicles
- Furniture and household furnishings



- Retirement accounts
- Stocks and bonds
- A business or interest in a business
- Pension
- Life insurance
- Intellectual property
- Jewelry
- Collectibles

## How Is Property Divided in Tennessee?

Like many states, Tennessee law requires an “equitable” division of marital property in a divorce. This does not mean that property must be divided equally between the parties. Instead, it means that the division of assets in a divorce must be fair. Factors a court may consider if required to make an equitable distribution of property include:

- The duration of the marriage
- The age, physical and mental health, vocational skills, employability, earning capacity, estate, financial liabilities and financial needs of each of the parties.
- The tangible or intangible contribution by one party to the education, training or increased earning power of the other party.

- The relative ability of each party for future acquisitions of capital assets and income.
- The contribution of each party to the acquisition, preservation, appreciation, depreciation or dissipation of the marital or separate property, including the contribution of a party to the marriage as homemaker, wage earner or parent, with the contribution of a party as homemaker or wage earner to be given the same weight if each party has fulfilled its role.
- The value of the separate property of each party.
- The estate of each party at the time of the marriage.
- The economic circumstances of each party at the time the division of property is to become effective.
- The tax consequences to each party, costs associated with the reasonably foreseeable sale of the asset, and other reasonably foreseeable expenses associated with the asset.
- The amount of social security benefits available to each spouse.
- Such other factors as are necessary to consider the equities between the parties.

## Separate vs. Marital Property

Before focusing on the division of property in a divorce a determination must be made with regard to what property is marital property and what property is

separate property. Tennessee Code Annotated 36-4-121(b)(1)(A) defines marital property as:

*"all real and personal property, both tangible and intangible, acquired by either or both spouses during the course of the marriage up to the date of the final divorce hearing and owned by either or both spouses as of the date of filing of a complaint for divorce..."*

Separate property is defined in Tennessee as:

- All real and personal property owned by a spouse before marriage.
- Property acquired in exchange for property acquired before the marriage
- Income from and appreciation of property owned by a spouse before marriage except when characterized as marital property under subdivision (b)(1)
- Property acquired by a spouse at any time by gift, bequest, devise or descent.
- Pain and suffering awards, victim of crime compensation awards, future medical expenses, and future lost wages.
- Property acquired by a spouse after an order of legal separation where the court has made a final disposition of property.

## Pre-Marital Agreements

If the parties entered into a pre-marital agreement prior to the marriage, and the agreement is determined to be valid, the terms of the agreement may govern what assets are considered marital property and which assets are considered separate property.

## Co-Mingling and Transmutation of Assets



Another way the issue of property often becomes confusing is when separate assets are “co-mingled” with marital assets. Co-mingling means that the asset was mixed in with a marital asset to the point where it becomes difficult to distinguish separate assets from marital assets, thereby converting it from a separate asset to a marital asset. All too often an asset is co-mingled without the owner of the asset realizing it was co-mingled.

Transmutation occurs when a separate asset becomes a marital asset because of how the asset is used. For example, imagine that you have an account with \$50,000 you inherited in the account. You use some of the funds as a downpayment on a house that you and your spouse eventually live in together. The funds “transmuted” from separate assets to marital assets once they were used to purchase.

## Options for Dividing Assets and Debts

When it comes time to actually divide the marital assets and debts a court rarely just divides assets down the middle and gives each side his/her portion. Instead, the court might sell assets and split the profits with the parties or award each party specific assets with the value of each assets in mind. For example, if the wife is awarded the marital residents in the divorce and the equity in the home is worth \$100,000 the court will likely award the husband other marital assets valued at around \$50,000, representing half of the marital assets.

Because of the potentially complex nature of the division of debts and assets in a Tennessee divorce it is always best to consult with an experienced Tennessee family law.

Justia, [Tennessee Code Distribution of Marital Property](#)

Divorcenet, [Division of Property in Divorce FAQ](#)

## About Bennett and Michael, Attorneys at Law



The law firm of Bennett & Michael is located on the historic public square in Murfreesboro, Tennessee. We offer knowledgeable and effective representation for families in divorce and family law situations, injured victims of negligent accidents, and those charged with misdemeanor or felony offenses.

Our firm takes pride in being a local law firm that delivers superior results at competitive prices right here at home for the people of Murfreesboro, Smyrna, La Vergne, and the greater Rutherford County area. Our staff is professional and helpful, and our attorneys are experienced litigators and trial lawyers.

When you need legal help, you should be confident that the lawyer you choose will provide you with exceptional, trustworthy, and effective services. Our experienced, dedicated, and compassionate lawyers and legal staff are committed to always protecting clients' rights and relentlessly fighting for their best interests. Enlist the unyielding advocacy at Bennett & Michael, and you can trust that you and your family will get the results, service, and respect that you deserve. You won't be disappointed.