



Division of Marital Property

General Information

In general, all property owned by either spouse is considered marital property in the State of Indiana. Marital property can include all kinds of property: personal property, homes and land, bank accounts and retirement accounts.

Tip: Things bought after the divorce is filed are not considered marital property.

The division of marital property in a divorce is governed by statute in the State of Indiana. The following statutes control property division in divorce proceedings.

IC 31-15-7-4. Division of property

(a) In an action for dissolution of marriage under IC 31-15-2-2, the court shall divide the property of the parties, whether:

- (1) owned by either spouse before the marriage;
- (2) acquired by either spouse in his or her own right:
 - (A) after the marriage; and
 - (B) before final separation of the parties; or
- (3) acquired by their joint efforts.

(b) The court shall divide the property in a just and reasonable manner by:

- (1) division of the property in kind;
- (2) setting the property or parts of the property over to one (1) of the spouses and requiring either spouse to pay an amount, either in gross or in installments, that is just and proper;
- (3) ordering the sale of the property under such conditions as the court prescribes and dividing the proceeds of the sale; or
- (4) ordering the distribution of benefits described in IC 31-9-2-98(b)(2) or IC 31-9-2-98(b)(3) that are payable after the dissolution of marriage, by setting aside to either of the parties a percentage of those payments either by assignment or in kind at the time of receipt.

As added by P.L.1-1997, SEC.7.

As noted above, Indiana is considered an equal distribution state. In general, this means that absent certain circumstances marital property shall be equally divided. This concept can be very important, especially where one spouse has brought a significant asset to the marital estate. Again, these issues are controlled by statute.

IC 31-15-7-5. Presumption for equal division of marital property; rebuttal

The court shall presume that an equal division of the marital property between the parties is just and reasonable. However, this presumption may be rebutted by a party who presents relevant evidence, including evidence concerning the following factors, that an equal division would not be just and reasonable:

- (1) The contribution of each spouse to the acquisition of the property, regardless of whether the contribution was income producing.

- (2) The extent to which the property was acquired by each spouse:
 - (A) before the marriage; or
 - (B) through inheritance or gift.
 - (3) The economic circumstances of each spouse at the time the disposition of the property is to become effective, including the desirability of awarding the family residence or the right to dwell in the family residence for such periods as the court considers just to the spouse having custody of any children.
 - (4) The conduct of the parties during the marriage as related to the disposition or dissipation of their property.
 - (5) The earnings or earning ability of the parties as related to:
 - (A) a final division of property; and
 - (B) a final determination of the property rights of the parties.
- As added by P.L.1-1997, SEC.7*

Debts

The division and payment of debts in a divorce or dissolution proceeding can sometimes be a complicated process.

The general rule is that a person is usually responsible for his or her own debts. Thus if you do not appear as a debtor on the debt you cannot be held liable for repayment. Exceptions to this general rule exist. The primary exception regards repayment of necessary items. If for example, prior to divorce your ex spouse had received medical care that was unpaid, the care provider would first seek collection from your ex spouse. If your ex spouse does not pay the debt owed you could be responsible for repayment under the necessary item exception.

Another difficult repayment situation occurs when an ex spouse is ordered to pay certain debts as part of the divorce. In this situation the company owed the debt can collect from an ex spouse who was a joint debtor. In the event that such a debt is paid by the one spouse alone the spouse stuck with the bill would have to return to court to seek remedies from the other ex spouse.

Division of Pension Plans and Qualified Plans

A pension plan is considered a promise to pay a defined benefit at a later date. Where one spouse has a pension as an asset of the marital estate, the court may split this pension with the use of a Qualified Domestic Relations Order (QDRO). Typically, in pension plan situations, the ex spouse will receive the pension monies when the person with the plan starts receiving his or her pension payments.

The same type of mechanism can be used to divide a 401(k) or IRA. In this circumstance, the money earmarked for the ex spouse as part of the property division is made subject to the QDRO and the ex spouse can determine when to receive the assets. Note, that typically the receipt of the asset will cause a taxable event.

Special Issues Related to Business Valuations

Owners of businesses and providers of professional services have an additional burden in the divorce process. In such instances, the owner of the business is typically attempting to preserve the business (and therefore the foundation of his or her income) while still comply with the equal distribution of assets required by law. In these cases the use of competent professionals such as lawyers and appraisers is essential. These professionals can help you navigate the pitfalls that divorce can provide for the business owner.

One of the pitfalls that the businessperson must be aware of is the difference between divisible good will and non-divisible good will. This distinction was drawn by the Indiana Supreme Court in the case of *In Re: Marriage of Yoon*, 711 N.E.2d 1265 (1999).

In describing the good will of a medical practice, the Indiana Supreme Court said:

“We hold that good will that is attributable to the business enterprise is divisible property, but to the extent that the good will is personal to the professional or to the business owner, it is a surrogate for the owner's future earning capacity and is not divisible In sum, to the extent a business or profession has good will (or has a value in excess of its net assets) it is a factual

issue to what extent, if any, that good will is personal to the owner or employee and to what extent it is enterprise good will and therefore divisible property.”

The Court suggested that some of the value of a professional practice is inherent in the very nature of the practice. However, the Court also noted that some of the good will value came from the long hours that the spouse worked.

The Court summarized this as follows:

“The goal in a dissolution, however, is not the value of the business (including the professional) for a buyer. Rather, it is to identify the portion of the value that is attributable to the business without the professional's continued participation. To the extent that the high level of receipts are due to factors unique to Dr. Yoon, for example, unusually long hours, the enterprise value, if any, is only whatever value exists in the patient base and would be transferable to a buyer unwilling to work the same long hours.”

Other Indiana cases followed this precedent, including two cases where the courts remanded to the trial court level to determine if valuations properly excluded personal good will. *Bertholet v. Bertholet*, 725 N.E.2d 487 (March 27, 2000) and *Frazier v. Frazier*, 737 N.E.2d 1220 (November 15, 2000).

With this legal precedent as a signpost, it is important that the divorce litigant with a business concern demonstrate the good will that should be properly included or excluded from the marital estate.