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Life events

By the numbers

- **41%** of first marriages end in divorce.
- The divorce rate for second marriages is **60%**.
- The divorce rate for third marriages is **73%**.

Source: divorcerate.org

Divorce: dealing with property issues during an emotional time

While not an outcome most of us want to consider when getting married, divorce is an unfortunately common occurrence today. Some studies indicate that 41% of first marriages and 60% of second marriages end in divorce. Here are some steps you can take to help make the financial aspects of divorce go as quickly and smoothly as possible.

Open communication

Both parties being as open as possible about their financial affairs will go a long way toward facilitating a smooth divorce. The more secretive a spouse is about what they own or owe, the longer and more involved the process is likely to become. By coming to open agreements about property and debt, you may avoid long drawn-out battles that can add months, maybe years, to the divorce process.

Seek help from your financial advisor

While you will generally need to have an attorney handle the legal issues and documents regarding a divorce, your financial advisor can play some important roles in the proceedings. He or she can provide you with information to help you make decisions about how to divide

property, what the tax implications may be concerning the decisions you make, how to determine what debts you owe, and so on. A financial advisor can also show you the results of different scenarios so you can make informed choices. Other roles of the financial advisor may be:

- **strategist:** helping you understand the financial implications of your divorce settlement issues
- **mediator:** facilitating understanding with regard to the financial situation of the involved parties by acting as intermediary
- **negotiator:** resolving discrepancies over property valuation based on financial research and projections
- **client expectations manager:** preparing you for the resultant financial situation of your divorce

Key points

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Develop open communication

- Your financial advisor can act as a financial negotiator and assist in many other aspects of the divorce process.

Determine your property settlement

- Spouses should start by developing an inventory of both separate and marital property.
- Check to see which state laws apply to your property distribution.

- Your financial advisor can help you determine the value of community property, understand the debt aspect of divorce, and even offer assistance with trial preparation.



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- **trial preparation assistant:** helping to organize and effectively communicate your financial information
- **evidence presenter:** explaining financial matters in court

Property settlement

There are three major concerns as you begin to try to divide your property in a divorce:

1. What is mine, yours, and ours?
2. How much is our property worth?
3. How are we going to divide the property?

Determining ownership

To determine what your assets are, an overall inventory of your property needs to be taken. The next step is to determine who owns what. An important categorization when determining ownership is separate versus marital property. The rules vary by state, but often separate and marital property may be defined as:

Separate property

- items brought into the marriage
- items inherited during the marriage
- items received as gifts during the marriage

Marital property

- everything (besides personal gifts and inheritance) acquired during the marriage, no matter whose name it is in
- in some states, any increase in the value of separate property is considered marital property

Property valuation

After you have determined what you each own separately, you will need to determine a value for your marital property, which is jointly owned. Sometimes you may choose to keep several pieces together in order to retain the value of an entire set, such as a furniture collection or china. Other items may have an emotional value attached to them that goes beyond their monetary worth. You and your spouse should indicate a value next to each piece of property on your inventory list. For some items, you may want to refer to outside sources in order to determine their value (see the “Resources” section at the end of this infosheet). Some examples include:

- **house:** You can get a formal appraisal, ask a real estate agent for the price he or she would assign to the house, or find out what similar properties are selling for in your neighborhood.
- **car:** There are reference guides at your library or on the Web to help you determine the current value of a vehicle. You also can refer to the used car section of a newspaper to find out the asking prices for vehicles similar to yours or consult car dealerships to see what they would offer.
- **other items:** If you have the original purchase price, you can use that amount to make a decision about the item’s current value. Keep in mind some items, such as consumer electronics, tend to depreciate quickly over time and may not be worth as much as you think.

Property distribution

The next step is probably the most difficult — determining who gets what. Different states have different laws regarding property distribution. It may be helpful to find out about your state’s law (in other words, what each of you would get should you have to take your divorce case before a judge) and use that information as a guide when dividing your marital assets. Refer to the table on page 3 for a general summary of the laws regarding property distribution in your state. The two main methods states use are:

Community property

- Each spouse’s separate property is identified and not distributed by a court.
- All remaining property is equally distributed.

Equitable distribution

- A couple’s marital property is distributed equitably, which does not mean equally, but fairly. In other words, the result may not be a 50/50 split. The spouse with less savings and earning potential, for example, could be granted more than a 50% share.
- Nonproperty issues are often considered, such as earning potential, career assets (job benefits including insurance, vacation, Social Security, stock options, and pensions), and personal investments in the marriage (the less-tangible choices or sacrifices made on behalf of the couple by one spouse, such as quitting a job or postponing education to take care of the children or to allow the other spouse to complete studies or advance a career).



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Summarizing the law in the 50 states: property division

	Community property	Only marital/ community property divided	Statutory list of factors	Nonmonetary contributions	Economic misconduct	Contribution to education
Alabama		X		X		X
Alaska	X ¹		X	X	X	
Arizona	X	X			X	X
Arkansas		X	X	X	X	
California	X	X ²			X	X
Colorado		X	X	X	X	
Connecticut			X	X	X	X
Delaware		X	X	X	X	X
District of Columbia		X	X	X	X	
Florida		X	X	X	X	X
Georgia		X				
Hawaii		X	X	X ³	X ⁴	
Idaho	X	X	X			
Illinois		X	X	X	X	
Indiana			X	X	X	
Iowa			X	X	X	X
Kansas			X		X	
Kentucky		X	X	X	X	X
Louisiana	X	X ²				
Maine		X	X	X	X	
Maryland		X	X	X	X	
Massachusetts			X	X	X	X
Michigan		X		X	X	X
Minnesota		X	X	X	X	
Mississippi				X	X	
Missouri		X	X	X	X	X
Montana			X	X	X	
Nebraska			X	X		
Nevada	X	X		X	X	X
New Hampshire			X	X	X	X
New Jersey						
New Mexico	X	X				
New York		X	X	X	X	X
North Carolina		X	X	X	X	X
North Dakota				X	X	X
Ohio		X	X	X	X	X
Oklahoma		X		X	X	
Oregon				X	X	X
Pennsylvania		X	X	X	X	X
Rhode Island		X	X	X	X	X
South Carolina		X	X	X	X	X
South Dakota				X	X	
Tennessee		X	X	X	X	X
Texas	X	X			X	
Utah						
Vermont			X	X	X	X
Virginia		X	X	X	X	X
Washington	X		X			
West Virginia		X	X	X	X	X
Wisconsin	X	X	X	X	X	X
Wyoming			X	X	X	X

¹ The parties may contract to make some or all of their marital property community property.

² Community property must be divided equally.

³ Nonmonetary contributions or lack thereof during marriage do not affect property division.

⁴ No statutory provision; case law is mixed.

Source for table:

"A Review of the Year in Family Law" by Linda D. Elrod and Robert Spector, *Family Law Quarterly* (Vol. 42, No. 8, Summer 2008). Copyright 2008 American Bar Association (ABA).



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Other options for undertaking property distribution on your own include:

- **taking turns:** Although this may sound like a childhood game of round robin, each of you could take a turn choosing an item off your list until you have distributed all of the property.
- **trading:** You and your spouse could create trade agreements based on the relative values you place on your property, for example, the furniture and silver in return for the car and appliances.
- **setting value limits:** Determine a value for each item and what percentage of the total value of all property each spouse will receive. Then each spouse can choose items until reaching his/her share limit.
- **splitting proceeds:** Marital property can be sold and then the proceeds divided equally between the spouses.
- **enlisting a third party:** You can place your case with an arbitrator who will determine how the property should be divided after speaking with you and reviewing evidence. Or you can consult a mediator who will help you and your spouse work out how to value and divide your property.

Don't forget debt

In a divorce, debt should be treated like property. If you do not pay off all your debts before the divorce process

begins, then you will have to determine who is responsible for each debt, similar to how your property was distributed:

- **individual debt:** considered separate property
- **joint debt:** considered marital property
- **debts involving an asset:** considered to be the responsibility of the owner of the asset (such as a car loan or mortgage)
- **debts concerning children:** In general, these debts are split between the spouses.

It is important to confirm what is actually individual debt and what is joint debt. Just because your name does not appear on a credit card, for example, does not mean you will not be responsible for the account. The best strategy may be to order a credit report to determine who "owns" which debts.

The divorce process: How long does it take?

The length of the process depends on how much you and your spouse can cooperate with one another, how quickly information is provided, and whether you are able to avoid a court trial. If you do end up going to trial, the length of the divorce process is not easy to predict as you will need to schedule hearings with the court in your state.

Resource

The American Bar Association offers tables summarizing state laws on their Web site at abanet.org/family/familylaw.

This material should be used as helpful hints only. Each person's situation is different. You should consult your financial advisor before making any decisions.

Contact your financial advisor for more information, or visit mfs.com.

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