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Legal Matters®

Think it's easy to divide property at divorce? Think again

Some people think they can handle a divorce on their own, especially if they don't have children (or they have grown children) and they're not fighting bitterly.

It sounds easy – you know what you and your spouse own, and you can figure out how to split it. Right?

Be careful – it's not always easy to know what property you're entitled to and how to divide it. In trying to end a marriage quickly or amicably, many people make big mistakes and come to regret them later – either because they overlooked assets they could have shared, or because they didn't take all the legal steps necessary to protect their interests.

Even if you and your spouse are separating on good terms, a divorce lawyer can help you know for sure what you have a right to, and make sure you actually receive it.

For instance, splitting a pension is difficult and legally complicated. The same can be true for an IRA or a 401(k) plan, and for Social Se-

curity benefits. If one spouse has stock options, how should they be divided?

Here are some other recent cases that show that it's not always obvious who's entitled to what:

Money from a lawsuit. Before getting divorced, a wife in Maryland brought an employment discrimination lawsuit and settled it for \$550,000. Whose property is that?

A divorce judge ruled that it was solely the wife's money. But the husband appealed, and Maryland's highest court decided otherwise.

The high court said that any part of the \$550,000 that was to compensate the wife for lost wages should be shared with the husband, because it replaced wages she would have earned during the marriage. But any part of the \$550,000 that was for other things (such as her emotional distress)

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This happened recently to the widow of a government employee who retired under the Civil Service Retirement System. When he retired, he chose an annuity payable only during his lifetime, as opposed to one that provided a survivor annuity for his wife.

The wife signed a spousal consent form. After his death, she applied for a survivor annuity anyway. She argued that neither her husband nor the notary who witnessed her signature had explained the form to her, and that she didn’t read it and only signed it because she trusted her husband.

But a federal appeals court said this didn’t matter, because the wife should have read the form before she signed it.

In another case, a wife in Kentucky signed a tax form handed to her by her husband. When the IRS later slapped the couple with \$87,000 in additional taxes and \$544,000 in interest, the wife argued that she shouldn’t be liable because her husband had made all the financial decisions and handled the taxes, and she had simply trusted him.

But a federal appeals court said that wasn’t good enough.

“One spouse cannot bury his or her head in the sand or turn a blind eye to the other’s accounting,” the court said. The wife in this case was liable for her share of the taxes because she “did just that, failing to question her husband even when the documents she signed should have pushed her to do so.”

‘Naïve’ live-in partner walks away with nothing

A New York couple never married, but they dated for 13 years, lived together and had a daughter.

During that time, the man purchased property in Manhattan and in the Hamptons, and told the woman that the places were “their” homes. The woman claimed the man referred to the properties as “theirs” and to her as his “business partner” because she worked at the company he had founded. She also claimed he said things like, “I will always take care of you,” “What’s mine is yours, what’s yours is mine, it doesn’t make a difference,” and “Everything that we put in, we will enjoy together; we’re working so hard for our family.”

The woman said that when she became pregnant again, the man persuaded her to have an abortion and told her that “If you don’t have the baby I will always be there for you and will always take care of you.”

When the couple broke up, the man refused to share any portion of the property in his name. She sued.

A court ruled that the man’s promises that that he would support her and share his property weren’t legally binding. (The woman could, however, seek child support.)

Although the woman put in long hours at the man’s company, helped renovate and decorate the family home, and cared for the couple’s daughter and the man’s children from prior relationships, the court said this didn’t create a legal obligation.

The woman’s “naïve belief” did not “transform the [man’s] statements to her over the years into an enforceable promise,” the court said.

Don’t look a gift Porsche in the mouth...

Some states, such as California, are “community property” states where married couples share an equal and undivided interest in almost everything they acquire during the marriage, except for gifts. This led to an interesting divorce case over who owned a sports car that a wife had arguably given her husband as a gift.

While the couple was married, the husband bought a Porsche using \$60,000 that the wife had received from the sale of her pre-marital home. The couples’ friends assumed that the car was a gift from the wife because it was purchased shortly before the

husband’s birthday.

When the couple divorced, the husband argued that the car was his separate property.

But a California appeals court said the Porsche was “community property” because the wife never signed a document waiving her right to be reimbursed for her separate-property contribution to the purchase of the car.

Because the purchase of the Porsche could be traced entirely to the wife’s separate funds, she had a right to be reimbursed for that money, the court said.



Voluntary retirement didn't terminate alimony

If you're thinking about retiring, don't just assume that your support payments will end when you do so. You'll want to discuss this with a lawyer to make sure you know what your rights are.

The highest court in Massachusetts recently held that voluntary retirement doesn't necessarily mean that the obligation to pay alimony ends – even if the person retires at or beyond the typical age of 65.

In this case, a couple divorced after 32 years of marriage. Their divorce agreement required the husband to pay the wife \$110,000 per year until his death or until she died or remarried.

When the husband turned 65, he voluntarily retired from his law practice, dramatically reducing his income. He then tried to terminate his alimony payments, but the court wouldn't let him.

Instead, the court reduced his payments to \$42,000, and said that the husband's decision to retire was just one factor that a judge should consider when deciding whether to reduce or eliminate alimony obligations.

Retiree's health premiums aren't split at divorce

A retiree whose employer agreed to pay his health insurance premiums for life didn't have to split the value of this benefit with his wife at divorce, according to the Indiana Court of Appeals.

The husband was a 75-year-old retiree who received a monthly pension from his employer and an additional payment of his health insurance premiums for life. The premium payments were non-elective and couldn't be divested, divided or transferred, nor could he have elected to receive a higher pension instead of the premiums.

The premiums had a present value of more than \$100,000.

His wife claimed the premium payments were "retirement benefits" and should be included in the marital assets to be divided.

But the court said the payments were the husband's separate property, since they hadn't been purchased with marital assets, were non-elective, and couldn't be transferred.

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Mother is allowed to move to another state

An Idaho couple divorced and had shared custody of their daughter. Later, the mother remarried and her new husband got a job in Michigan. The father wanted to keep the girl in Idaho, while the mother wanted to bring her to Michigan.

When the case went to court, a judge issued an order that prohibited the mother from moving to Michigan – or, for that matter, anywhere else that would be too far away to continue the current sharing of physical custody. The judge prohibited the mother from moving even if she went by herself and didn't take the daughter with her.

But the Idaho Supreme Court disagreed and overruled the order. It said a judge doesn't have the authority to prevent a parent from moving out-of-state.

"A court presiding over a child custody matter does not become a family czar with unlimited authority to order the parents to do anything that the court believes is in the best interests of the child," the court said.

"There is no doubt that it would be in the best interests of [the daughter] for her parents to live in

close enough proximity that they can both have frequent and continuing contact with and physical custody of her... However, the... court had no authority to order [the mother] to reside in any particular geographical location."



In trying to end a marriage quickly or amicably, many people make big mistakes and come to regret them later – because they overlooked assets or didn't take the legal steps necessary to protect their interests.

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was hers and didn't have to be shared.

Accrued sick and vacation days. A husband in Illinois had accumulated 115 sick days and 42 vacation days at the time of his divorce. Whose property is that?

A divorce judge ruled that the wife was entitled to \$15,000 for her share of the days.

But the state's highest court disagreed, and said the wife wasn't entitled to anything. It said the value of the days was "speculative," since the husband might use them before retirement and never receive payment for them.

Windfall during divorce. A wife in Tennessee filed for divorce from her husband, who was a lawyer. After the filing – but before the divorce was granted – the husband settled a huge case and received a \$17 million fee. Whose property is that?

The state's highest court said the wife could share in the fee, because property can be divided if it is acquired any time up to the final divorce hearing. But other states may have different rules.

Company-paid benefits. A North Dakota hus-

band was the co-owner of a trucking company with his father. Although he didn't receive a large salary, the company paid many benefits for him, including clothing, housing, health insurance and out-of-pocket health costs, legal fees, life insurance, disability insurance and many personal expenses.

A court decided that the wife was entitled to have these payments considered as part of the husband's income when calculating how much he should pay her as support.

Insurance payments. After divorce, an Arizona husband bought a new home that turned out to have mold problems. He filed an insurance claim and settled with the insurance company for \$168,000.

His wife then argued that this money should be considered part of his income when deciding how much he should pay to support their children.

The answer? A court ruled that the money wasn't income to the extent that it was reimbursement for property damage, repair expenses, or litigation fees. But anything beyond that could be considered income and subject to child support.

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