



CLIENT GUIDE: **DIVISION OF PROPERTY, ASSETS & DEBTS**

The division of assets and debts is often the most complex and fiercely contested aspect of a dissolution of marriage. I have prepared this guide to explain how Illinois law classifies property, distinguishes between "marital" and "non-marital" assets, and determines the equitable division of your estate. It also reinforces the critical importance of the Financial Affidavit in protecting your financial interests.

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- INTRODUCTION -

You are reading this guide because your case involves the distribution of property and the allocation of debt. Much like support obligations, the Illinois legal system approaches property division with a focus on objective classification and specific statutory factors rather than subjective fairness or emotional attachment.

First, you must understand that Illinois is an **"Equitable Distribution"** state, not a "Community Property" state. This means the court divides property in a manner that is *fair*, but not necessarily *equal*. There is no automatic 50/50 split of assets. The court allocates property and debts in "just proportions" based on the specific facts of your marriage and your financial circumstances.

This reality dictates how we approach discovery. We do not negotiate based on what you feel you deserve. We negotiate based on how the assets are classified and valued under the Illinois Marriage and Dissolution of Marriage Act.

I. CLASSIFICATION: MARITAL VS. NON-MARITAL

Before the court can divide anything, it must classify every single asset and debt into one of two categories: **Marital** or **Non-Marital**.

Marital Property: Illinois law presumes that all property acquired by either spouse after the date of the marriage is marital property. This includes salaries, bonuses, retirement accounts, real estate, vehicles, and furniture, regardless of whose name is on the title or account. If it was acquired during the marriage, the court assumes it belongs to the marriage.

Non-Marital Property: Non-marital property is generally not subject to division by the court; it remains with the spouse who owns it. Common examples include:

- Property acquired before the marriage.
- Property acquired by gift, legacy, or descent (inheritance).
- Property acquired in exchange for property acquired before the marriage.
- Property excluded by a valid agreement (such as a Prenuptial Agreement).

The Danger of Commingling: If you mix non-marital assets with marital assets (for example, depositing an inheritance check into a joint checking account used to pay bills) you may unintentionally convert that non-marital asset into marital property. This is called "*transmutation*." Once an asset is transmuted, it is often impossible to reverse the process.

II. EQUITABLE DISTRIBUTION: THE FACTORS

Once property is classified, the court divides the **Marital Property** in "just proportions." To determine what is just, the judge must consider specific statutory factors found in Section 503 of the Illinois Marriage and Dissolution of Marriage Act, including:

1. **Contribution:** The contribution of each party to the acquisition, preservation, or increase or decrease in value of the marital or non-marital property. This includes the contribution of a spouse as a homemaker.
2. **Dissipation:** Whether one party has wasted or "dissipated" marital assets for purposes unrelated to the marriage (see below).
3. **Duration:** The duration of the marriage.
4. **Economic Circumstances:** The relevant economic circumstances of each spouse when the division of property is to become effective.

5. **Prior Obligations:** Obligations and rights arising from a prior marriage.
6. **Prenuptial Agreements:** Any valid agreement of the parties.
7. **Status:** The age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, and needs of each of the parties.
8. **Custodial Provisions:** Whether the property division is in lieu of or in addition to maintenance (spousal support), and the reasonable opportunity of each spouse for future acquisition of capital assets and income.

III. ALLOCATION OF DEBT

Debts are treated similarly to assets. The court will classify debts as marital or non-marital and allocate them equitably. This includes credit card balances, student loans, mortgages, and tax liabilities.

It is critical to stop the accumulation of marital debt immediately. Be aware that you may be held responsible for debts incurred by your spouse if they are for "family expenses," even if you did not sign for the debt.

IV. DISSIPATION OF ASSETS

If a spouse spends marital funds for purposes unrelated to the marriage at a time when the marriage has undergone an "irretrievable breakdown," this is called "*Dissipation*". Common examples include spending marital funds on affairs, gambling losses, or reckless spending.

If we can prove dissipation, the court may order the spending spouse to reimburse the marital estate. We must file a specific notice of intent to claim dissipation, so it is vital that you review financial records for any unusual or unexplained expenditures.

V. VALUATION OF ASSETS

We cannot divide what we cannot value. We must establish the "Fair Market Value" of all significant assets.

- **Real Estate:** We generally utilize professional appraisers rather than relying on tax assessments or Zillow estimates.
- **Retirement Accounts:** Defined contribution plans (like 401(k)s) are valued by their balance. Defined benefit plans (pensions) often require an actuarial (professional) valuation.

- **Businesses:** If one spouse owns a business, we may need to retain a forensic accountant to determine the business's value, independent of the owner's personal goodwill.

VI. INSTRUCTIONS: THE FINANCIAL AFFIDAVIT

Just as with support issues, the **Financial Affidavit** is the absolute foundation of the property division case. You must list **every** asset and **every** debt.

- **Completeness:** You must disclose everything, even if you believe it is non-marital or has little value. Hiding assets is a sure way to destroy your credibility with the judge and face severe sanctions.
- **Accuracy:** Do not guess at balances. Use the most recent statements available.
- **Documentation:** You must provide the underlying documents (statements, deeds, titles) to prove the existence and value of every item listed.

Important Warning: The division of property is final. Unlike child support or maintenance, which can often be modified later if circumstances change, **property settlements are non-modifiable**. Once the Judgment for Dissolution of Marriage is entered, you generally cannot go back and ask for a different split of the assets. Therefore, we must ensure we have a complete and accurate financial picture before we agree to any settlement.