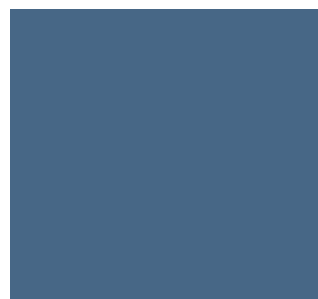


Equitable Division



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Each case has unique facts and circumstances. The information provided in this guide is general information and is not a substitute for legal advice from an attorney. The information contained in this Guide does not constitute legal advice nor is it intended to be legal advice.

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What is Equitable Division?

Equitable division is the process of dividing assets and debts accumulated during the marriage between two spouses getting a divorce.

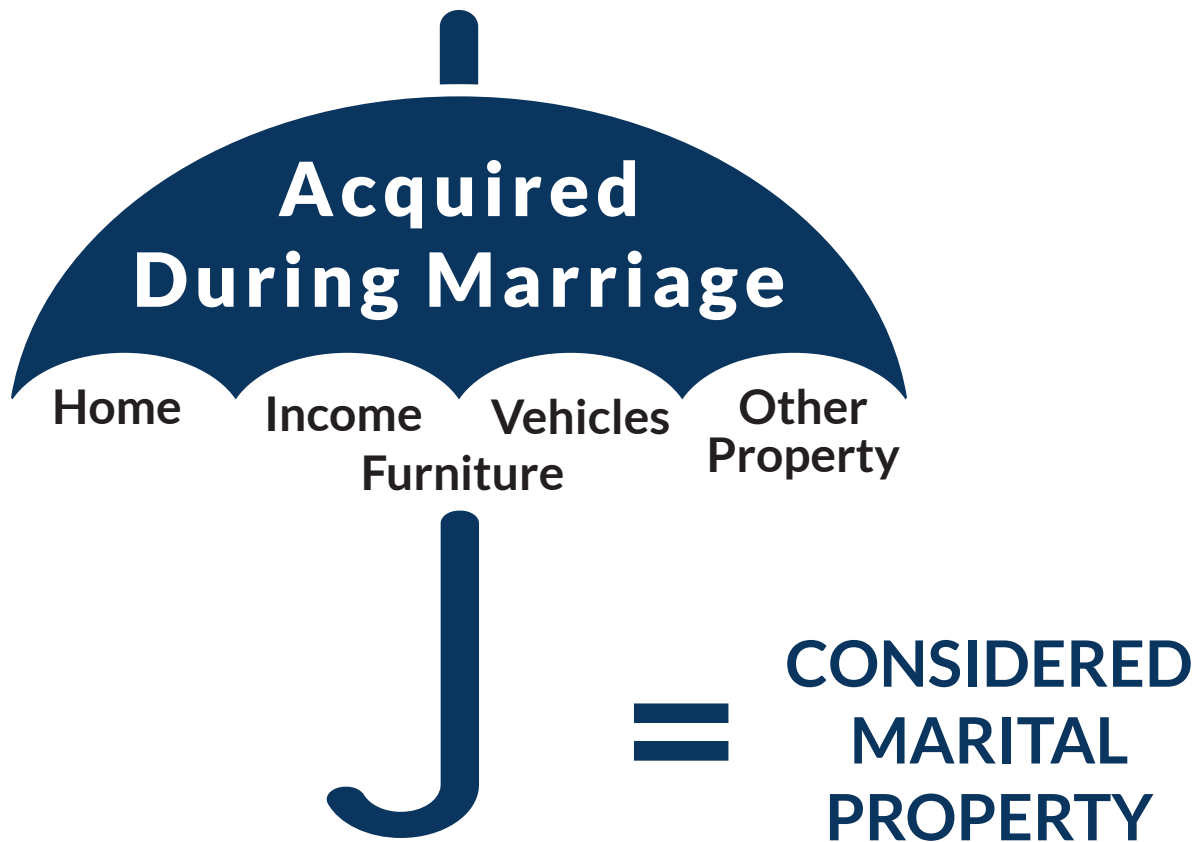
In Georgia, each spouse is entitled to a fair share of all marital property acquired during the marriage upon divorce.

Unlike community property states like California, Arizona or Idaho, *marital property in Georgia is not necessarily divided equally between the spouses but is divided equitably or fairly as determined by a judge, jury, or by the agreement of the spouses.*

EQUITABLE  EQUAL



Marital Property



Marital Property Defined

Marital property is property acquired by the parties during the marriage. Only marital property is subject to equitable division.

Marital Property Includes

Checking and savings accounts, investments, pensions, IRA and 401k, military retirement, house, vehicles, furniture, etc..

Practice Pointer

Any asset acquired during the marriage by either party is considered marital. This is true even if it was earned by only one spouse.

Property Checklist

Marital Property Division Checklist

All of your marital property must be divided upon divorce. In the heat of a disputed divorce it may be easy for some important details to fall through the cracks. The following checklist may help you keep track of all of your marital property so that you and your attorney can work together to formulate a property settlement that is in your best interest.

- ___ Real estate (marital home, rental properties, etc.)
- ___ Bank accounts statements (checking, savings, CDs, etc.)
- ___ Retirement accounts (401(k), IRAs, pensions)
- ___ Investment accounts , RSU, stock options
- ___ Debts (credit cards, taxes, mortgage, etc.)
- ___ Personal property (cars, furniture, collectibles, etc.)
- ___ Business(es)
- ___ Other property



Separate Property

Separate property is property acquired before the marriage or even during the marriage under certain circumstances, such as by gift or inheritance.

Separate property is not subject to equitable division. Instead, it remains the separate property of that person after a divorce.



Separate Property Could Become Marital!

Property could lose its status as separate property in a variety of ways. For example, if a party mixes separate property funds with marital funds, it **MAY** become marital in nature.

It is best to raise concerns about separate property to your attorney early in your case.

Business Property

Although it may not be readily apparent to most, businesses, just like real property or investment accounts, are assets that may be subject to equitable division upon divorce in Georgia. In fact, Georgia case law makes it quite clear that business, similar to other forms of property may be divided upon divorce if deemed marital property, or they may be exempt from the equitable division process if they are deemed to be separate property. For further discussion of the marital v. non-marital property in Georgia, see our article addressing this topic. According to the Supreme Court of Georgia:

“Certainly, a closely-held corporation may be a marital asset subject to equitable division in a divorce. And, even a business which was started as the result of separate pre-marital funds may be subject to equitable division if there is an appreciation in the value of the business during the years of the marriage due to the spouses’ individual or joint efforts.”



Dividing the House

For many people, the house will be the largest asset at issue during the divorce. As discussed above, the house could be considered marital property and subject to equitable division or it could be considered separate property and not subject to equitable division.



Typically, there are three options regarding how the home will be divided:



Selling the Home

The profit from the sale may either be divided between the spouses or given entirely to one spouse as a form of property settlement or spousal support.

Fixed Ownership

One spouse keeps the home for a fixed period. This route is taken by couples who still have minor children and who wish for the children to grow up in the marital home.

Keeping the Home

Yet another option is for one spouse to keep the marital home and buy out the other spouse's share. Typically the spouse retaining the home will refinance the mortgage into her/his name only.

Dividing Marital Property

The parties may decide to come to an agreement on how marital property should be divided. If the parties cannot agree as to how their marital property will be divided, the Court will decide how to divide their marital property by looking at various factors such as:



Why Meriwether & Tharp?



Meriwether & Tharp is one of the largest and most experienced divorce law firms in Georgia. Our firm has won numerous awards including Lawyer Monthly's Family Law firm of the Year Award for the entire USA.



Divorce hurts, but it doesn't have to be nasty. At Meriwether & Tharp, we believe there's a better way. Here's how we strive to provide high quality family law representation:

Educate Our Clients

Education is the foundation for success. We arm you with the knowledge you need to achieve the results you desire.

Proactive Strategy

No more guessing what comes next – you decide the pace and you control the outcome of your case.

Resolution Focus

Divorce is a puzzle, not a fight. Solutions, not blind advocacy, is our approach.


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