

# Asset and Debt Division Attorney in Utah

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A divorce is like the severing of a contract. **Assets and debts must be divided**. Alimony and child support, **if applicable, must be determined**, and, child custody must be determined. Utah divides asset and liabilities **equitably** – and **this does not necessarily mean equally**, though, depending on the circumstances, it may work out to be an equal division.

To protect your interests during a divorce in Utah, **choose an experienced divorce property division attorney to make sure you are awarded the best possible outcome**. Utah family law attorney Eric M. Swinyard is dedicated to assisting his clients through the process of dividing debts and assets in a divorce. Contact our law office today to schedule your **30-minute confidential, no-cost consultation to learn about your legal options**.

## Asset & Debt Division in Utah

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Couples have **two types** of **assets** and **liabilities**: **Non-marital** and **marital**. Non-marital assets and liabilities are those that a spouse **owned or owned prior to the marriage**. Gifted and inherited assets, even if gifted or inherited during the marriage, are also non-marital property. **These items are set aside for the owning spouse.**

**All other assets and debts are marital and are subject to equitable distribution**. Furthermore, assets that were one spouse's prior to the marriage that has been *commingled* are usually considered marital assets. For example, if the husband had a bank account with \$25,000 in it and *added his wife's name to the account*, and then used the account to pay the marital debt, the account *becomes* a marital asset that is *divided equitably*. **In many cases, simply adding a spouse's name to an account makes it a marital asset subject to equitable distribution**. Several factors determine what percentage of each asset is awarded to each spouse.

# Factors That Affect the Division of Assets and Debts

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***If you and your spouse cannot amicably divide assets and debts, the court will do it for you*** . In most cases, it is better that you come to a fair and equitable distribution of the assets and debts. While the court will come to a fair and equitable distribution, you may not get an asset or debt that you want. **The court looks at the following when determining how to divide assets in an equitable manner:**

- How long the parties were married;
- The contribution by both parties to the marriage;
- The future needs of each spouse;
- Alimony awards;
- Child custody;
- The health and age of each spouse, which includes employability, potential retirement and business chances after the divorce;
- The occupation of each spouse, which determines earning power;
- Each spouse's education as it pertains to employability; and
- The non-marital assets of each spouse.

**Debts are considered in much the same way, but do have some additional parameters:**

- Premarital agreements.
- Real property may be sold, one spouse may buy the other out or one spouse may keep the marital home in exchange for other assets. If the real property is sold, equity is divided equitably between the spouses. Generally, if one spouse keeps the house, that spouse is responsible for the mortgage. If possible, the mortgage should be refinanced so as to hold the other spouse harmless.
- Vehicle payments are generally paid by the spouse who keeps the vehicle. If the parties have two vehicles, each spouse gets one, along with the car payment, if any.

***Retirement plans and pension benefits are handled a bit differently*** . In most cases, if a plan or benefit is considered a marital asset, the person *whose name is on the account* gets it. However, if the plan or benefit skews the equitable distribution, the court will split the plan or benefit. If only one spouse's name is on the plan or benefit, the court enters a ***qualified domestic relations order***, or a ***QDRO***, to ***order the holder of the account to divide it between the spouses as dictated by the court***.

## List of Assets and Debts for Divorce

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**Marital assets and debts that are subject to equitable distribution may include:**

- ***Real property***, including the *marital home* and any other real property, such as *land*, *investment property*, and *business property*. Debts that go along with property include *mortgages*, *second mortgages*, and *liens* on the property.
- ***Furniture*** and any *payments* on the furniture, whether those payments are owed to a

bank or the furniture store.

- Some **personal property**, including *jewelry* and any *debts* related to the personal property.

*Additional assets and debts* include **home equity, tools, vehicles** and **payments on vehicles, recreational vehicles** and *payments on them, retirement accounts, investments, life insurance policies, financial portfolios, bank accounts, lines of credit, revolving debt such as credit cards, personal loans, debts owed to friends and family, tax debt and **past due accounts** such as **medical bills**. Debts created *outside* the marriage, such as student loans that were created by one spouse prior to the marriage are *awarded to the creator of the debt*.*

## Alimony

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***Alimony is considered income in the state of Utah***. For as long as you pay alimony, ***it is tax deductible***. The *receiving spouse* must *claim the alimony as income* on his or her tax returns.

## Utah Divorce Property Division FAQ

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The law office of **Eric M. Swinyard, Attorney at Law** is please to present **the answers to Utah divorce property division FAQ** listed below. Please do not hesitate to give us a call at 801-833-0948 with any further questions – we will be happy to ***review your legal options during your free 30-minute case evaluation***.

### How Does Equitable Division of Property Work?

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The division of marital assets and property during a divorce in Utah is governed by equitable division. ***Equitable means fair, but the equitable division of property during a divorce is not necessarily a 50/50 split***. Instead, the presiding court will consider many different factors to determine a fair division of property, assets and debt. If the parties agree on how to divide their property as part of the divorce, the judge must review the agreement to be sure that it is fair.

Property Division should be guided by the general rule that if there are two of the same or similar items, each individual will receive one. The division of furniture and household items should be done so that each individual will be able to set up a separate life and home. ***When all factors are considered, marital property, including intangible financial assets, will be distributed between both parties in an equitable manner***.

### What are the Factors Used to Determine Fair and equitable Property Division?

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The factors that are taken into consideration to divide property and assets accumulated during your marriage will include ***how long you were married, the occupation of each spouse and your age and health***. Property division will also depend on the property's value, inherited assets, the terms of an existing prenuptial agreement and the distinction of marital or separate assets.

### What is the Legal Definition of Property?

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The legal definition of property includes **real property like your home or land and any property attached to it. Personal property includes tangible assets or possessions** like clothing, jewelry, household items, furniture, collections, tools and vehicles. Intangible financial assets may include benefits, retirement, income, investments and dividends.

## What is the Difference Between Separate and Marital Property?

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During a divorce in Utah, property will also be defined as separate property and marital property. **Separate property are the property and possessions that belonged to each spouse before marriage** and was kept separate after marriage, it may also include an inheritance or gift. **Marital property is both property that is earned or acquired during the marriage** and property used for the benefit of the marriage – even if was originally separate property.

## How will Property Value be Determined?

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**The amount of money a piece of property is worth is defined as a fair and impartial assessment of the property's value.** An accurate evaluation of real property value is determined by a professional real estate appraiser. In general, household items are not included in the division of assets during a divorce unless there are items of significant value. Personal property like furniture, collectibles, and vehicles will be determined by the resale value.

## What Happens if an Agreement is Not Reached in Mediation?

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If both parties cannot come to an agreement for the division of property during mediation, **the court will order a fair division of the marital estate in the final judgement within your divorce decree.** When you and your spouse do come to an agreement during mediation, the judge will review the terms to make sure it is acceptable, fair and reasonable.

## How Does the Length of the Marriage Affect Equitable Distribution in Utah?

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The equitable distribution or 'common law' state of Utah **will base the division of property during a divorce on the amount of time the couple was married and each individual's separate property.** Based on the date on the marriage certificate to the date of separation, the length of your marriage will be considered one of the following:

- **A Long-Term Marriage** is a marriage lasting 10 years or longer and will generally end with an equitable division of 50/50 for each party.
- **A Short-Term Marriage** is a marriage that lasted less than 10 years and property will be divided to put you and your spouse back into the same positions you were in before marriage.

## Choose an Experienced Divorce Property Division Attorney in Utah

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If you have been served with divorce papers or you are contemplating filing for divorce, contact Utah assets and debts divorce attorney Eric Swinyard for a consultation about your case. Since the division of assets and debts can be a *complicated process*, it is best to have an attorney

who is *experienced* in the area to ensure you receive a ***fair*** and ***equitable distribution***, even if you and your spouse agree on the division of assets and liabilities. **Eric M. Swinyard, Attorney at Law** provides skilled legal advice in Utah County and Salt Lake County for family law issues including divorce, child custody, child support, alimony, and guardianship. Contact divorce attorney Eric M. Swinyard by calling our law office at **(801)-997-6164** or fill out our online form today.

Practice Areas

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