

Marital Property Vs. Separate Property

By Tom Norton, CPA, CDFA

Most states recognize a distinction between marital property and separate property. In a divorce, marital property is divided between the spouses, and separate property is not (see *Everything Including The Kitchen Sink* for more).

So how do you know what is marital and what is separate? State law differs on this, but there is a general framework that is usually followed. Separate property is property:

1. Owned prior to the marriage
2. Inherited, even if it was inherited during the marriage
3. Received as a gift, whether from the spouse or anyone else

In some states, other property may also be considered separate. Common examples are:

4. Personal injury awards received during the marriage
5. Property purchased with or exchanged for separate property

In addition, what starts out as separate property can be converted (or "transmuted") into marital property. In some states, this can happen if you commingle separate property with marital property. An example would be taking your inheritance and depositing it into a joint bank account.

You might also transmute separate property into marital property by adding your spouse to the title, or by simply using the property as if it were marital property.

If separate property appreciates (i.e. increases in value) during your marriage, some states consider the appreciation to be marital. For example, let's say you have an investment account you owned prior to the marriage that was worth \$20,000 on your wedding date. Now you're getting a divorce and it's worth \$30,000. In the states that treat appreciation as marital property, \$20,000 would be separate property, and \$10,000 would be marital property.

Other states say that the appreciation of a separate asset remains separate property, so the whole \$30,000 would be separate. Talk to your divorce lawyer if you have questions about this, because it can get very complex depending on your circumstances and your state law.

The concept of marital vs. separate property is an important one. The distinction could be worth thousands or even tens of thousands of dollars in your divorce settlement.

For more information:

[All 50 States](#)

[The Divorce Financial Survival Series](#)