

# Dividing Property in a New York Divorce

*Equitable distribution explained: marital vs. separate property, the marital home, debt, retirement, and the factors courts weigh.*

## 1. — Equitable Distribution: Fair, Not Always Equal

New York divides marital property by **equitable distribution** under DRL § 236(B)(5). 'Equitable' means fair — which is often, but not always, a roughly equal split. New York is **not** a community-property state, so there is no automatic 50/50 rule. The court weighs a list of statutory factors to reach a fair result.

## 2. — Marital vs. Separate Property

Only **marital property** is divided. In general:

Usually marital	Usually separate
Income, assets, and property acquired during the marriage (whoever's name is on it)	Property owned before the marriage
Retirement contributions and growth during the marriage	Inheritances and gifts from third parties
A business grown during the marriage	Personal-injury compensation for pain and suffering
Debts incurred during the marriage	Property defined as separate by a valid prenup/postnup

The cut-off date for what counts as marital is generally the **date the divorce is commenced**.

## 3. — When Separate Property Becomes Marital

Separate property can lose its protected status. **Commingling** (mixing separate funds into joint accounts), retitling an asset into both names, or using marital effort or funds to improve a separate asset can convert some or all of it into marital property — or create a marital claim on its appreciation. Good records are essential to trace and protect separate property.

## 4. — The Marital Home

The home is often the largest and most emotional asset. Common options are:

- **Sell and split** the net proceeds according to the agreed or ordered shares.
- **Buyout** — one spouse keeps the home and refinances or offsets the other's share with other assets.
- **Deferred sale** — one spouse (often the custodial parent) stays for a set period, with sale and division later.

Mortgage qualification, carrying costs, and capital-gains exposure should drive the decision, not just sentiment.

## 5. — Dividing Debt

Marital debt — mortgages, car loans, credit cards, and similar obligations incurred during the marriage — is also subject to equitable distribution, regardless of whose name is on the account. Debt run up for purely personal or wasteful purposes may be assigned to the spouse who incurred it.

## 6. — Retirement Accounts & Pensions

The portion of pensions, 401(k)s, 403(b)s, and IRAs accumulated during the marriage is marital property. Pensions are typically divided using the Majauskas formula and a Qualified Domestic Relations Order (QDRO); defined-contribution plans are divided by QDRO; IRAs by a transfer incident to divorce. Correct paperwork avoids tax and penalty.

## 7. — Factors Courts Weigh

DRL § 236(B)(5)(d) lists the factors a court considers, including:

- The income and property of each spouse at marriage and at divorce;
- The length of the marriage and the age and health of both spouses;
- The need of a custodial parent to keep the marital home;
- Loss of inheritance and pension rights, and future financial circumstances;
- Each spouse's contribution — including as a homemaker — to the marital estate;
- Wasteful dissipation of assets and any transfers made to defeat the other's claim;
- The tax consequences to each party, and any other just and proper factor.

## 8. — Frequently Asked Questions

### Does it matter whose name is on the asset?

Usually not. What controls is when and how the asset was acquired, not the title. Property acquired during the marriage is generally marital even if titled in one spouse's name.

### Is everything split 50/50?

No. New York divides marital property equitably (fairly), which can be unequal depending on the statutory factors. Separate property is not divided at all.

### What happens to the house?

Common outcomes are selling and splitting the proceeds, one spouse buying out the other, or a deferred sale — chosen based on finances, refinancing ability, and the children's needs.

### Am I responsible for my spouse's debts?

Marital debt is shared regardless of whose name is on it. Purely personal or wasteful debt may be assigned to the spouse who incurred it.

### How is my inheritance treated?

Inheritances are generally separate property — but if commingled with marital funds or jointly titled, they can become partly or fully marital. Keep inherited assets separate and documented.

## Ready to speak with an attorney?

Call **(716) 759-4529** for a free, confidential consultation, or book online at [www.weinrieblaw.com/contact-us.html](http://www.weinrieblaw.com/contact-us.html)

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