

Rhode Island Divorce Lawyer Article: Asset Division: Equitable does not always mean equal-RI Law

By Rhode Island Divorce lawyer david Slepko

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Frequently asked questions and answers written by a Rhode Island Divorce Attorney concerning equitable division of assets in Rhode Island divorces.

1. What assets are marital property under Rhode Island law (RI) subject to being divided by the court in a divorce?

In Rhode Island, all assets acquired by the parties (with limited exceptions as set forth below) during the course of the marriage constitute marital property subject to equitable division by the Family Court. However, gifts and inheritances are not marital property subject to being divided unless the parties co-mingle the assets. A co-mingling could occur if a person puts the other spouse's name on an account or puts the other spouse's name on the deed to real estate. Please contact Rhode Island Divorce Attorney David Slepko 401-437-1100 <http://www.slepko.com> if you need legal help.

The appreciation in value of gifts or inheritance during the course of the marriage does not constitute marital property. There are also other assets that although obtained during the course of the marriage do not constitute marital assets, such as personal injury settlement relating to pain and suffering and certain types of disability pensions. Please note that personal injury settlements pertaining to lost wages or other similar such damages do in fact constitute marital property.

Property acquired prior to the date of the marriage is not marital property. However, the appreciation in value of that account, real estate or property, is marital property. For example, if husband had an IRA account with \$20,000 on the date of the marriage and the IRA account increased during the course of the marriage, the portion of the increase in value of the IRA would be marital property.

2. Because Rhode Island is a no fault state, does that mean the assets are always divided 50% to the wife and 50% to the husband in a divorce?

No. A no fault divorce in Rhode Island simply means that a fault grounds is not necessary in order to obtain a divorce in Rhode Island. In other words, all the parties have to prove to obtain a divorce in Rhode Island is irreconcilable differences that led to the breakdown of the marriage. However, the parties are free to allege other various fault grounds as a cause of the break up of the marriage.

3. How does fault affect a Rhode Island (RI) divorce?

Even though Rhode Island is a no fault state, fault can play a very important role in how the court equitably divides the assets and debts of the parties. After the family court has determined what assets are in fact marital assets, then the court will look at various factors to determine the equitable division of assets. The court may consider the following factors in determining equitable assignment of the property.

a) The length of the marriage;

- b) The conduct of the parties during the marriage;
- c) The contribution of each of the parties during the marriage in the acquisition, preservation or appreciation in value of their respective estates;
- d) The contribution and services of either party as a homemaker;
- e) The health and age of the parties;
- f) The amount and sources of income of each of the parties
- g) The occupation and employability of each of the parties;
- h) The opportunity of each party for future acquisition of capital assets and income;

- Source: R.I.G.L. 15-5-16.1 (Rhode Island General Laws)

among other factors which are set forth in R.I.G.L. 15-5-16.1. That statute specifically states that the court can consider any factor which the court so expressly finds to be just and proper.

Please note that in many cases the parties decide to divide the property 50% to the wife and 50% to the husband. One of the most important factors the judge will look at in granting the husband or wife a disproportionate share of the marital assets is if the other party had an affair, was emotionally or physically abusive or had substantial drug and alcohol problems. The court will also look at other negative conduct in awarding a disproportionate share of the marital assets. It is not uncommon for a judge to award a 60/40 or 55/45 distribution if the court finds that one party had an extra marital affair and that affair led to the breakdown of the marriage.

4. Can the Rhode Island Family Court defer a sale of the marital home for the child/children?

If one of the parties requests a deferred sale of the home, then the court must determine whether or not it is economically feasible for the person who is living in the home to pay the mortgage, liens, taxes and insurance on the home until the home is sold. In making that determination the court will look at the income of the resident parent, any alimony the parent receives, child support and other source of income to make those payments. The intent of this law is to prevent foreclosures, uninsured property, and deterioration of the marital home and to protect the parents' equity in the house. R.I.G.L. 15-5-16

After the court determines that it is "economically feasible" for the parent to remain in the house with the minor child, the court will consider whether it is in the best interests of the minor child or children to live in the house. The court will use its discretion in making this determination.

In most cases where there are children and the custodial parent can afford the marital home, the court will exercise its discretion and allow the children to remain in the house for a period of time, which may be until the youngest turns 18 years old and graduates from high school.

In the event that the court defers the sale of the house, the court will usually determine the equity in the house. The court will determine the equitable share of the person leaving the marital domicile. In many cases, if the parties cannot agree to the fair market value of the real estate then the parties will need to hire real estate appraisers. The court will hear testimony from the appraisers and determine the fair market value of the home. In some cases the parties agree to use the same real estate appraiser. Please note that in the vast majority of cases, these matters are settled out of court prior to any trial or hearing.

After the period of deferment the house must be sold and the parent who is out of the house will be paid his or her equitable share at that time. The court will usually order a mortgage to protect the person who is owed money for their equitable share. The court may also award interest on the mortgage. If the court

orders a deferred sale of the house, it can be modified or terminated at the discretion of the court. If the party living in the house with the children remarries or there is a substantial change of circumstances in the economic status of the person living in the house, then the property may be ordered sold.

In many cases when the custodial parent can afford an increased mortgage payment, the parties will settle with the custodial parent refinancing and buying out the noncustodial parents equitable share of the equity in the house. At that refinance the non custodial parent receives cash and typically deeds over his/her interest in the house to the custodial parent.

Please call Rhode Island Divorce Lawyer David Slepko at 401-437-1100 <http://www.slepko.com/divorce.htm>

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