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Debt and Divorce

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Do courts take debt into account when dividing property in a divorce?

Yes, property division in divorce considers debts and assets. Debt is divided as part of the divorce. This includes mortgages, car loans, credit cards, student loans, medical debt, and taxes. In Wisconsin, the law usually starts by splitting marital debt 50/50. This can include hidden debt, like credit card debt one spouse racks up without the other knowing. It can also include debt that only benefits one spouse, like a car loan for a car that only one spouse drives. However, you can argue to the judge that a debt from the marriage was not for the family and should not be considered 'marital debt.'

Are creditors bound by the debt division imposed by the court?

No. If the divorce judgment says your ex-spouse is supposed to pay off the credit cards but they don't, the creditor can still come after you for payment. The divorce judgment is binding between you and your ex-spouse. So, if you pay off the credit card debt that your ex-spouse was supposed to pay, you can take them to court for that money.

What if one person gets the property and the other person gets the debt? This seems like it could get really confusing!

It can be! This is when having a lawyer look over your documents, like a proposed Marital Settlement Agreement ([with minor children](#) or [without minor children](#)), can

be very helpful. Here's an example with a car:

If you took out a joint loan on a car and your spouse is keeping the car, you will want your name off that loan after the divorce, not just off the car title or registration. The court would probably include an order for your ex-spouse to refinance the loan in their name. The divorce judgment might say that you need to pay off part of the loan, as well. The part of the loan you pay off, the remaining loan your ex-spouse needs to pay off, and the value of the car need to be considered when dividing the property and the debt.

Does debt usually stay with the property?

Debt stays with the property, but that doesn't mean the person keeping the property will pay all the debt. For example, if one person keeps a car that has a loan, usually that person will also take on the loan and need to refinance it in their name. But sometimes the bank won't agree to refinance. One person will have to take responsibility for paying the debt even though both people are still legally obligated to pay. This is because both were on the original loan. If neither person can refinance or afford to pay off the debt, they may need to sell the property instead to pay the debt.

My spouse is keeping the car. Can I get my name off the debt?

Usually, the best way to avoid being responsible for your ex-spouse's debt is for the person keeping the debt to refinance the loan in their name alone. But sometimes, like with a mortgage on a house, it's not possible to refinance, and both of you will still be named on the debt.

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