



**SEOLS**  
Southeastern Ohio Legal Services

## REAL ESTATE AND DIVORCE



### How does the Court divide real estate in a divorce?

First, the Court will decide if the real estate is marital property or separate property. Marital property is all property acquired during the marriage UNLESS the property was given to one spouse as a gift or an inheritance. Separate property is property a spouse owned before the marriage, and any property given to one spouse as a gift or an inheritance.

Second, if the property is marital property, the Court must equitably divide it between the spouses. This could happen several ways:

1. One spouse is given sole ownership of the property and will be responsible for any debt on the property.
2. One spouse is given sole ownership of the property and the other spouse is ordered to support the owner spouse by paying the mortgage or other debt on the property.
3. If there is no mortgage on the property or equity to divide and one spouse wants to keep the property, they must reimburse the other spouse for their half of the equity. They could do this by a lump-sum payment, monthly payments, or by taking responsibility for extra marital debt.
4. Order that the property be sold and the spouses equally divide the equity in the property.



### What is the value of the real estate?

To determine the value of the real estate, you could agree upon an amount with your spouse, you could pay to have an appraisal completed, or you could use the value given by the County Auditor. If you or your spouse disagrees with the other's appraiser, another appraiser may be hired.

To prove the value of the real estate to the Court, you should bring a copy of the appraisal or the county auditor's valuation to the final hearing. If the other spouse disagrees with your appraisal, you will have to call the appraiser as a witness to explain how they arrived at that figure. If you are using the county auditor's evaluation figure, you will need to bring a certified copy of the property card to the final hearing and may need to call the auditor as a witness.



### How do I calculate the amount of equity in the home?

Once the Court determines or the parties agree upon the value of the home, the equity is determined by subtracting the amount of all loans secured by your home from the value of your home. For example, if you have a mortgage with an outstanding balance of \$50,000 and your home is valued at \$100,000, you have \$50,000 of equity in your home.



## What if my spouse owned the home before we married but I helped pay the mortgage/helped repair home/put on additions

If marital money was used to pay down the mortgage, the non-owner spouse is entitled to half the equity in the home that accrued during the marriage. The equity amount is the amount the principal was paid down with marital funds.

Spending marital funds or other efforts to improve the home can result in a marital interest in the property if the improvements added value to the property. The marital value/equity created is determined by subtracting the value of the home at the time of the divorce from the value of the home at the time of marriage. You may need to hire an appraiser to determine these values. Each spouse will typically be entitled to half the marital interest.

In these situations, you are unlikely entitled to passive appreciation in the value of the property, which includes increase in value due to market or lapse in time rather than efforts of the owner or regular maintenance and payment of property taxes by the non-owner spouse.



## How Is the home transferred to me?

If you are awarded the home in the divorce, it is typically transferred into your name via a Quit Claim Deed. This is a separate document that must be drafted by an attorney (preferably), signed by the owner spouse(s), and filed with the county recorder's office. The Court will NOT draft this for you.

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