

Dividing marital assets in a divorce

by Trey Yates



There are many myths surrounding divorce law in Texas. One myth is that all marital assets will be divided 50/50 in a divorce. This is not the law. In a divorce, the court will order a “just and right” division of the couple’s *community property*. This means that neither party is automatically entitled to an even split of the community estate, nor is a court ever allowed to award one spouse’s *separate property* to the other spouse.

Let's take a closer look at the two major categories of marital property in the State of Texas: ***Community Property*** and ***Separate Property***.

Separate property consists of property owned or claimed by a spouse before marriage; property acquired by a spouse during marriage by gift, devise, or descent; and, recovery for personal injuries sustained by a spouse during marriage, except any recovery for loss of earning capacity during marriage.

Community property consists of the property, other than separate property, acquired by either spouse during marriage. This is true regardless of which spouse has possession of the property. The fact that one spouse is named on the title, deed, or account, or that one spouse receives the asset as payment for personal services (e.g. salary), or the asset will not be paid until a later date (e.g. retirement benefits), will not change the character of the property.



Presumption of Community Property

In Texas, there is a legal presumption that property possessed by either spouse during or on dissolution of marriage is presumed to be community property. This legal presumption can only be overcome by “clear and convincing evidence” that the property in question is indeed separate property. The most common way of proving separate property is by tracing the asset from the date of acquisition to the present date.

Right to Reimbursement

The increase in value of a spouse’s separate property during marriage is generally considered separate property. However, a spouse may have a claim for reimbursement when the community estate in some way improves the separate estate of one of the spouses, or vice versa.

Social security benefits and divorce

By Patricia Barrett, CFP, CDEA

Decisions about filing for Social Security benefits will affect you financially for the rest of your life. And if you have gotten divorced in the past or are getting one, you may qualify to receive Social Security on the work record of your ex-spouse or soon-to-be ex-spouse. However, you must meet several rules for qualifying to receive these benefits. You also must consider at what age to start taking those benefits.



Here are the basic rules for qualifying for Social Security benefits on the work record of your ex-spouse:

- 1) You must be at least age 62 and was married 10 years or more;
- 2) Your divorce must have been final at least two years before you file;
- 3) Your ex-spouse must have reached the age at which he or she is eligible to receive a retirement or disability benefit;
- 4) Not entitled to a higher Social Security benefit under your own work record;
and
- 5) You must be unmarried.

If you meet all the above criteria, and you have reached your full retirement age -- *that age is now 66 for people born from 1943 to 1954 or 67 for birthdates in 1960 and later* -- then you qualify for 50% of the amount your spouse is due at his or her full retirement age. If you are 62, then you qualify to receive 35% of his or her benefits.

Any benefit you get does not affect the amount your former spouse, or his or her current spouse, may receive. And the remarriage of the ex-spouse has no bearing on your ability to file under his or her earnings record. It is only your own remarriage that revokes your eligibility to file under his or her work record. If you remarry and are married for 10 years or more and divorce, you can take either benefit, whichever is greater. By the way, Social Security's regulations and policies are gender-neutral and apply equally for men and women.

At what age should I apply?

If you contributed to your own Social Security benefits, it may well be greater than 50% of your ex-spouse's benefits, which may not make sense. Although it may be to your advantage to file under his or her earnings record (a spousal benefit) and allow your own benefits to accrue delayed-retirement credits. For instance, if you have a \$1,400 per month benefit coming at age 66, but would be entitled to only \$800 by filing under your exes' earnings record, you could file for the lower spousal benefit and switch to your own, much greater benefit, at age 70. (See Table 1)

Spousal Benefit at age 66	Spousal Benefit at age 62 (25% Reduction)	Your Own Benefit at age 66	Your Own Benefit at age 70 (32% increase)
\$800	\$600	\$1,400	\$,1850

Table 1

So, assuming you were earning less than \$15,120 for the year of receipt (earnings limitation for taking benefit before age 65), you could receive \$600 per month for 8 years, then switch to your own enhanced benefit of \$1,850 per month. This is \$57,600 in income over those 8 years, while waiting for your own benefit to increase 8% per year.

Note that for this strategy to work, the ex-spouse must be old enough to file for Social Security himself. He or she does not have to apply for those benefits, but must be eligible.

What if you have no Social Security earnings record?

You are still eligible for the Spousal Benefit, but obviously would not have the option of later switching to your own benefit. You can still decide at what age to apply for your Social Security benefits -- at age 62, 66 or later, in order to secure the delayed retirement credit. (See Table 2)

Spousal Benefit at age 62 (25% Reduction)	Spousal Benefit at age 66 (Full Retirement Age)	Spousal Benefit at age 70 (32% increase)
\$600	\$800	\$1,056

Table 2

Assuming you have other income sources, the best choice would be to allow your benefits to continue to earn that 8% per year deferred retirement credit increase as long as possible. Additionally, you may be able to take a reduced spousal benefit while you wait.

What are your options if your ex-spouse dies?

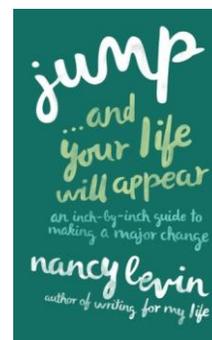
If your ex-spouse dies, you can access a “widow’s benefit” as early as age 60. Once again, you must have been married to your ex-spouse for 10 years or more. However, if you remarry before age 60, you will not be eligible to take the widow’s benefit. But, if you are over age 60 and remarry, you are still eligible to receive a widow’s benefit.

Since each case is unique, it's best if you consult with a Certified Divorce Financial Analyst. These trained professionals are knowledgeable about maximizing your Social Security benefits following divorce from within the context of your total financial situation. Knowledge is power, even when it comes to Social Security. For more specific information on Social Security, visit www.socialsecurity.gov.

Each divorce situation is unique, with its own set of circumstances and financial issues. This information is meant to provide a guideline. For specific legal and financial advice on divorce, please consult a board certified and experienced family law attorney, and a certified divorce financial analyst.

***Jump...and your life will appear* by Nancy Levin**

Are you longing to make a big change in your life, but can't seem to muster the courage to do it? Are you considering divorce, switching careers, moving or setting some boundaries with someone in your life? This new book can help!



It's a step-by-step guide that shows you how to act on what your soul is asking you to do.

The author, Nancy Levin, is Event Director for Hay House, a publisher of books, audio and video in areas such as Self-Help, New Thought, Philosophy, Psychology, Alternative Health, Men's/Women's Issues and more.

Nancy chronicles her own "jump" throughout the book, offering exercises in each chapter designed to enlighten and motivate you, "inch by inch," helping you get from where you are to where you want to be.

"Admit to yourself what you already know," she implores in chapter one, adding that this first step is enormously freeing. "When something is 'off' in our life, you know it. And it takes an incredible amount of energy to continue the denial -- energy that could be used toward letting go of the old and inviting in the new."

Further in, Nancy helps you "set the stage for real freedom by imaging yourself as free."

"I'd convinced myself that I could stay with him and still get all of my needs met, but it wasn't possible...As long as I stayed and propped him up, I could hide from what I truly wanted and from all I was capable of becoming."

"Most of the time, we're held captive in an invisible prison of our own beliefs. In my marriage, I believed that my husband held all the cards. That belief happened to be true, but only because I allowed it."

"If we want to live fulfilled lives, we have to let go of the belief that the needs and opinion of others are more important and valid than our own," she writes.

"I share the story of my process -- my 'jump' -- with you in hopes that some of what you read here will resonate in your own life," she writes. "Perhaps my story is part of 'our story' -- the human journey toward finding our true selves and our unique place in this world."