

Dividing property and its implications following divorce

There can be a lot of doubts and questions involved on how the properties and debts divided among the couple followed by divorce. Read on to find out how the settlements are made between the husband and wife concerning properties after divorce.

What is spousal property?

Spousal property includes all the assets such as home, land, cars, furniture, rental income, company shares, savings, etc. and liabilities such as debts, mortgages, leases and loans which the couple had jointly acquired during the course of their marriage. The property, either movable or immovable, bought by the couple with their combined earning during the course of their marriage or a gift received by them together or a separate property but that's used by both of them extensively also come under this category. Spousal property is also called as marital property.

What is separate property?

Property, movable or immovable, bought before marriage or received as a gift before marriage or inherited individually or bought exclusively out of one person's earnings is considered as separate property.

How will the house be divided which was bought by the couple during the marriage?

Under the current laws, ownership of a property vests with the person in whose name the title of the property is registered.

Inherited Property: An inherited property remains with the spouse to whom it is transferred to.

Title held by the husband: When the house is bought in the name of the husband before the marriage or if he inherits the property, the wife cannot have any share in the house as the husband holds ownership. The house when bought after marriage and is in the name of the husband and there is no financial contribution from wife, the wife is not entitled to any share in the said property. If the house is bought after marriage in the name of the husband but the wife financially contributed equally to buying the house, then, she will have to show the financial payments made for buying the property to claim her share of the property.

Title held by the wife: when the house is bought in the name of the wife during marriage, she holds ownership of the house. However, if the husband can prove in the court that he funded the purchase, even though the title is held by the spouse, he can claim the property.

Joint ownership: this scenario arises when both the husband and the wife co-own a property. Following a divorce, if the property is divided, both the parties are bound

to repay individually since the property is bought against a loan in most cases. One of the following ways can be considered while dealing with a jointly owned property:

When one spouse buys the Property – when either the husband or the wife is willing to acquire the property, he/she can negotiate the terms with the other spouse and buy the entire property from him/her. Based on the market value, the other person's share is calculated and the same is reimbursed to. After both the parties agree to the terms, the same is put down on paper to change the title in the name of the buying party.

Sell the property – Both the Husband and wife may decide to sell the property and divide the share amongst themselves. In such scenario, issues like outstanding loans or mortgages must also be sorted out.

Joint Ownership – the estranged couple might still choose to hold continued co-ownership of the property following divorce. In doing so, they both can enjoy long-term benefits such as appreciation in the value of the property. To avoid any disputes later, it's advisable to be clear with the liability specifications and the claims in a separate agreement.

Who has the right to streedhan property after marriage?

The wife has inalienable right over her streedhan. Any property either movable or immovable gifted to the woman at the time marriage or after the marriage is termed as streedhan. Since it is exclusively her property, no one else, not even her husband, has the right to claim a woman's streedhan property after her marriage.

What happens if the wife had given her streedhan to in-laws but couldn't retrieve it back?

The wife can give her streedhan to her husband or in-laws but when she claims it back, they must return it. The wife has the absolute right over the property and she can use it however she wishes to, at any point. If the husband or the in-laws whom the wife had trusted had converted or alienated or used the same inappropriately, then it's a criminal breach which is punishable under sections 405 and 406 of the IPC. Even if the husband had used the streedhan during emergency situation, it is his duty to return the streedhan.

TAX Implications on Asset after Divorce:

When a spouse receives an asset from his/her spouse without any consideration prior to divorce is tax free. After divorce, the asset is considered as a gift and is taxable on the recipient. Any subsequent income from the assets, after a divorce, would be taxable at the hands of the recipient on the spouse who receives the asset.

Only in Goa, the couple are required to register the properties they own, so that, upon divorce the couple can have their separate properties without any disputes. If the same is not registered, the properties will be considered as joint property by husband and wife and each spouse will get equal share of the property upon divorce.

What happens to the property when the wife is abandoned by husband?

If the husband abandons his wife, but didn't get divorce, the wife has the right to claim her share in the property.

If the husband has married already and has children, the legally wedded wife will be given first preference.

If the husband is found to have married twice and has children in both families, the first legal wife and her child/children can claim their share in the husband's property.

Although there are lots of discussions going on in settling property, there is no particular law in India which says about the amount to be given to the wife by the husband upon divorce. The amount to be given depends on the discretion of the courts and on case to case basis.