

Divorce myth: Assets are divided 50/50



When a couple are divorcing one of the toughest parts of separation can be deciding how their marital assets should be divided. It is a common misconception that the assets should be divided equally between the parties. However, this is not a rule but a mere starting point.

There will no doubt be cases where a 50/50 division of the assets is the correct approach, but this is not always the case. Broadly speaking the division of assets is based on what is fair and reasonable in each individual case and there is no hard and fast rule or set calculation which can be applied to determine how assets should be divided. Each divorce settlement will turn on its own set of circumstances – there is no one-size-fits-all approach and this can be frustrating for those going through the divorce process. Thankfully, there is guidance that helps us to determine how a divorcing couple's assets should be divided.

In a divorce, how are assets divided?

At the outset, each party should provide full details of their financial position so that each party has a complete picture of the marital finances. There are then a number of factors which must be considered to establish whether one party may be entitled to more than 50% of the marital assets. These factors include the needs of each party in terms of their housing and income, the resources available to each party, the standard of living enjoyed by the couple prior to separation, the ages of each party and the duration of the marriage, any physical or mental disability of either party and any contributions made by each party to the family. Such contributions are not only financial contributions but also include, being the primary carer of the children for example. In the eyes of the law, caring for the children of the family is as valuable in terms of contribution as providing the lion's share of the family income. It is also relevant where the assets have originated from, such as if they were inherited or owned prior to the marriage.



Main reasons why one party would receive more in a divorce settlement

The primary reason for awarding one party more than the other in a divorce settlement is because their 'need' requires it. For example, if one party is the primary carer of the family's two small children, they will have a greater need, in terms of both housing and income, than the party who isn't. Further, their earning capacity and mortgage capacity is likely to be limited as a result of caring for the children, which will inevitably mean they need more of the marital assets.

Similarly, in a case where there are no children of the marriage and the marriage is a short one, it may not be fair or reasonable to share one or both parties' pre-marital assets in any final settlement.

In essence, when deciding how a divorcing couple's assets should be shared, the aim is to divide assets in a way that is fair-but this does not always mean 50/50.

How can we help

Our expert family team are here to help you and advise whatever your situation may be. Find out more about our [family law](#) areas of expertise or [contact us](#) when you are ready.



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