

Who is Responsible for the Debt?

Determining who is responsible for marital debts is a question of determining which property belongs to the couple (community property) and which property belongs to an individual (non-community property). Debts which are related to community property are the joint responsibility of both spouses. The exact distribution of debts will depend on the particulars of each case and state law.

In “equitable distribution” states (most states) the courts will look at what is “fair.” In “community property” states the court will lean towards holding both people jointly responsible for debts incurred during the marriage unless one spouse can prove that the debt was the separate property of the other spouse.

The following provides some information about which property is generally viewed as belonging to both spouses (community property) and which property is generally viewed as being individually held (non-community property).

Community Property

Real estate bought during marriage

All earnings during the course of the marriage and property acquired with the earnings

Sometimes Student loans (especially when debt was incurred *during* the marriage)

Joint Checking Accounts

Joint Credit Cards

Purchases made by one spouse that are actually “family expenses,” such as purchases for:

- Food
- Child’s clothes
- Child’s medical expenses

Non-community property that has been co-mingled (mixed) with community property may be considered community property

Non-Community Property

Assets owned before marriage

Assets acquired by inheritance

Assets acquired by gift

Sometimes secret expenditures like gambling debts, the cost of illegal drugs, or money spent on an affair

Sometimes student loans

Purchases made in the name of only one spouse (unless those purchases are considered “family expenses”)

Proceeds from a pension that fully vested *before* marriage was entered into

Personal injury awards received prior to the marriage

A business belonging to a spouse prior to the marriage (but an increased value of the business that occurred during the marriage could be considered community property)

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