

*"Expect the best, plan for the worst, and prepare to be surprised."* Denis Waitley

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## Divorce and Community Property

### Introduction

The vast majority of community property questions arise in the context of divorce. Not surprisingly, it is in this context that most community property assets are divided.

### How is Community Property Divided In Divorce?

Community property is divided equitably upon divorce. This means that the community property is divided 50/50 unless fairness would not warrant a 50/50 split. Although community property assets are generally divided 50/50, equitable division simply requires that 50% of the total value of the assets be awarded to each spouse and not that each spouse has a 50% interest in every community asset.

### How Is Property Divided That Cannot Be Split?

When community property assets cannot be easily split (e.g. a house), the judge has the right to use pro-rata apportionment when dividing the community property assets. Pro-rata apportionment occurs when the court does not give each spouse a 50% interest in every community property asset but rather gives 100% of one asset to one spouse and 100% of another asset to the other spouse. One of the main reasons for engaging in pro-rata apportionment is that it limits ongoing interaction between the divorced parties because each spouse has independent control over their pro-rata assets. For example, one spouse may be awarded the house so as not to force the children to be uprooted while the other spouse will be given other assets in equal value to the house.

### Impact of a Spouse's Marital Misconduct

A spouse's marital conduct, good or bad (e.g. adultery) can never be taken into consideration when making an equitable division of community property.

### Impact of a Spouse's Financial Misconduct

A spouse's financial misconduct can be taken into account when dividing community property. Financial misconduct includes excessive expenditures, the concealment of funds or the fraudulent disposition of community property.

### When is Alimony / Spousal Maintenance Awarded?

Alimony will be ordered by the court if the spouse can establish one of the following:

- 1) they lack sufficient property to meet their reasonable needs;
- 2) they are unable to support themselves through appropriate employment;
- 3) they are the custodian of a child whose age or condition makes it difficult to support themselves;
- 4) they contributed to the educational opportunities of the other spouse; or
- 5) they were part of a marriage of long duration and have reached an age that effectively precludes their ability from gaining suitable employment.

### Determining the Amount of Alimony / Spousal Maintenance

Once it is determined that a spouse is entitled to alimony / spousal maintenance, a court will consider the following factors in determining the amount:

- 1) the standard of living established during the marriage;
- 2) The duration or length of the marriage;
- 3) The age, employment history, and earning ability of the spouse seeking alimony;
- 4) The physical and emotional state of the spouse seeking alimony;
- 5) The spouse's ability to meet their own financial needs as well as meet the needs of the alimony seeking spouse;
- 6) The comparative financial resources between the spouses; and

- 7) The extent to which the alimony seeking spouse has reduced their career opportunities for the benefit of the other spouse.

**About the Author:**  
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Scott F. Burns, Esq. is an Arizona attorney whose clientele include professional athletes, business owners, and families desirous of protecting their personal and professional legacies through the use of asset protection strategies, estate planning and business consulting.

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