



Community Debt Guide



Note: This guide is intended to provide general legal advice regarding the division of community debt in a divorce in Idaho. If you need specific legal advice regarding your situation, please contact an attorney.

For an explanation of community property in a divorce, please see our [What is Community Property? Guide](#) on our website: [What is Community Property? Guide](#).

What is Community Debt?

Community debt is a term that refers to debt that must be divided amongst spouses in a divorce by either agreement of the parties or by the court after a trial. In Idaho, a debt incurred during marriage is presumed to be a community debt. *Gardner v. Gardner*, 107 Idaho 660, 662, 691 P.2d 1275, 1277 (Ct. App. 1984), citing *Simplot v. Simplot*, 96 Idaho 239, 526 P.2d 844 (1974). In other words, the court will assume that any debt that is acquired during a marriage is a community debt.

However, this is a rebuttable presumption, which means that either party may prove through evidence that such a debt is not a community debt and is a separate debt that should not be divided between the spouses in a divorce.

What is Separate Debt?

Separate debt is debt that is considered the debt of only one spouse and is not divided between the spouses in a divorce. In Idaho, debt that was incurred prior to a marriage is considered separate debt. See Idaho Code Sections [32-910](#) and [32-911](#).

What if Debt Acquired During the Marriage is Really Separate Debt?

How Can You Prove That a Debt Acquired During the Marriage is Separate Debt, Not Community Debt?

Either party may prove through evidence that a debt acquired during the marriage (that is assumed by the court to be community debt) is not actually community debt. This must be proved “with reasonable certainty and particularity” that the proceeds of the loan were separate property. *Winn v. Winn*, 105 Idaho 811, 814, 673 P.2d 411, 414 (1983).

There are several ways that a spouse can prove that a debt was either separate or community debt.

1. What Was the Nature of the Debt: How Was It Used or Why Was It Acquired?

In other words, the court will examine what the nature of the debt was – was the debt community or separate debt? For example, if the money from a loan was separate property or used for separate property of one spouse, then the debt is also separate. *Gardner v. Gardner*, 107 Idaho 660, 662, 691 P.2d 1275, 1277 (Ct. App. 1984).

However, if the debt was used for, or acquired for, the benefit of both parties, the court will likely determine that it is community debt. See *Twin Falls Bank & Tr. Co. v. Holley*, 723 P.2d 893, 896 (Idaho 1986); *Simplot v. Simplot*, 526 P.2d 844 (Idaho 1974).

How Can You Prove That a Debt Acquired During the Marriage is Separate Debt, Not Community Debt? (continued)

2. What Was the Intent of the Parties As to the Debt?

Additionally, if there was an intent between the parties that the debt would be considered either separate or community debt, then that intent will determine the nature of the debt in a divorce. *Winn v. Winn*, 105 Idaho 811, 814, 673 P.2d 411, 414 (1983).

3. What Factors May the Court Consider to Determine Whether Community Debt is Actually Separate Debt?

The court will analyze the following factors to make a determination regarding whether the debt was community or separate debt:

- Was the loan secured for a community purpose;
- Whether the primary source of repayment of the debt is separate or community property;
- Whether the security for the debt was separate or community property (for example, was the loan secured based on a community property home?);
- What was the lender's basis for lending the money; and
- Who signed the documents that created the debt?

No one factor alone will determine the nature of the debt. See *Gardner v. Gardner*, 107 Idaho 660, 662–63, 691 P.2d 1275, 1277–78 (Ct. App. 1984); *Winn v. Winn*, 105 Idaho 811, 814, 673 P.2d 411, 414 (1983).

How is Community Debt Divided in a Divorce?

How is Community Debt Divided in a Divorce?

In dividing community property, the Court will determine the total value of the community property and then subtract any community debts, including any support payments or attorneys fees to be paid by the community estate (the spouses). The remaining amount of community property will then be disbursed to the spouses. See *Donndelinger v. Donndelinger*, 690 P.2d 366, 373 (Idaho App. 1984).

Can A Spouse's Separate Property be Used to Pay a Community Debt?

The separate property of the spouse that acquires a community debt may be used to pay a creditor for the community debt (or be subject to a creditor on the community debt). See *In re Hicks*, 300 B.R. 372 (Bankr. D. Idaho 2003); *Twin Falls Bank & Trust Co. v. Holley*, 111 Idaho 349, 723 P.2d 893, 897 (1986); *Williams v. Paxton*, 98 Idaho 155, 559 P.2d 1123, 1132 (1976).

However, a creditor cannot claim a spouse's separate property to repay the other spouse's separate debts. *In re Hicks*, 300 B.R. 372 (Bankr. D. Idaho 2003).

Attorney Services

If you need help finding an attorney to assist you with a divorce, contact the following organizations:

- [Idaho Legal Aid Services, Inc.](#)
- [Idaho Volunteer Lawyers Program](#)
- [Idaho State Bar Association Attorney Referral Service](#)