

Property Division in Turkish Divorce: A Comprehensive Legal Guide

Divorce is the legal termination of a validly established marriage by a court order when the conditions set by law are met, while both spouses are alive. As the marriage union comes to an end, one of the most frequently asked questions is: "How does property division in Turkish divorce work?" The divorce process is of significant importance for its economic consequences as well as its emotional aspects. Because of its financial impact, property division in Turkish divorce requires careful legal attention alongside other separation procedures, and it also comes to the forefront when a marriage ends for any other reason, such as death.

Understanding the Legal Property Regime in Turkey



First and foremost, to understand the foundation of property division in Turkish divorce, it is necessary to look at the concept of the legal property regime. The legal property regime is the default system recognized by law when the parties have not chosen one

themselves.

The default legal property regime in effect in Turkey since 2002 is the participation regime for acquired property.

- Under this regime, the income earned by spouses during marriage and assets purchased with that income are considered joint property under certain conditions and are divided equally in the event of a divorce.
- This is the source of the common public phrase about asset division: "assets are split 50/50."
- The principle upon which the regime of participation in acquired property is based is that earnings derived from joint labor are shared.
- Whether working or a homemaker throughout the marriage, both spouses are considered to be in a kind of division of labor and have equal rights to the resulting economic savings.

The Two Types of Property in a Marriage

Under this regime, there is a fundamental distinction between two types of property:

1. Personal Property (Kişisel Mallar) These are unshared values that are considered to belong exclusively to each spouse.

- For example, assets owned before marriage, inherited or gifted wealth, personal items, and similar values are personal property.
- These assets are not given to the other party in a divorce; they remain with the owner.

2. Acquired Property (Edinilmiş Mallar) This refers to any property values gained through labor and income-generating activities during the marriage.

- For example, salaries, savings, business earnings, social security payments, etc., are acquired property.
- In the event of a divorce, these acquired assets are divided equally (half and half) between the spouses.

The legal property regime—unless the spouses agree to a different regime—begins with marriage and generally continues until the marriage ends. It is terminated by divorce, death, or transitioning to a different property regime. If the spouses have not made a different agreement between themselves (a property regime contract), the provisions of this default legal regime will apply, and the property division in Turkish divorce will be carried out accordingly.

Important Note: The legal property regime between spouses ends exactly when the divorce lawsuit is filed. Accordingly, as a general rule, an asset purchased the day after the divorce case is filed is not included in the division. However, if the court does not grant a divorce or the spouses abandon the divorce, the marriage will continue; thus, assets purchased after the filing date of the lawsuit (if they are not personal items) will be treated as acquired property.

Alternative Property Agreements

Spouses can choose another regime, such as the separation of property, by entering into a property regime agreement in the form of a notarized arrangement or approval, either at the time of marriage or during the marriage. In this case, property division in Turkish divorce will be determined by the specific contract (for example, in a separation-of-property regime, since there will be no sharing, everyone will keep their own property). However, because such an agreement is rarely made in practice, the vast majority of property division cases are resolved under the default regime for participation in acquired property.

Shared vs. Unshared Assets in a Divorce

What exactly is divided, and what is kept? The assets shared within the scope of property division in Turkish divorce are those acquired (earned) during the marriage. Unshared assets, on the other hand, are assets that are considered personal property. Let's break these down in detail:

Shared Assets (Acquired Property)

- Savings obtained as a result of the spouses' work (salary savings, savings accounts in the bank).
- Real estate purchased during the marriage (house, land, summer house, etc.), provided there is no special circumstance requiring it to be considered personal property—for instance, if it wasn't bought with inheritance money.
- Vehicles purchased during the marriage (automobiles, etc.).
- Securities bought for investment purposes with joint income (stocks, gold, etc., savings).
- Profits obtained during the marriage by a business belonging to one of the spouses (even undistributed dividends can be calculated).
- Payments such as a spouse's retirement compensation or severance/notice pay received upon leaving a job.
- Values that replace acquired property (such as money obtained when an acquired asset is sold).
- Income derived from the spouses' personal property.

Unshared Assets (Personal Property)

- Assets owned prior to the marriage (including engagement gifts).
- Assets acquired through inheritance or donation (land, house, money, jewelry, etc.).
- Receivables for moral damages.
- Items for personal use (clothes, jewelry—especially a woman's jewelry) are considered her personal property.
- Values that replace personal property.
- Other property assets that spouses have legally deemed personal through a property regime agreement.

Special Circumstances Regarding Assets

- Jewelry worn at the wedding is considered the woman's property. This is a rule based on custom and is also established by Supreme Court decisions. Therefore, jewelry

cannot be subject to the liquidation of the property regime; it can be the subject of a separate debt claim lawsuit.

- If one spouse owns a sole proprietorship, assets arising from the business's activities may be deemed the personal property of that spouse under a property regime agreement.

In summary, the core of property division in Turkish divorce focuses on sharing the earnings and investments obtained through joint effort. The unshared ones are those of a personal nature or legally protected values. In the liquidation lawsuit, the court will distinguish between acquired property and personal property for each asset and will subject only the acquired property portion to division.

Types of Financial Claims in Property Division

These three terms express the claim rights that may arise during the liquidation of the property regime and correspond to different situations:

1. Participation Claim (Katılma Alacağı)

This is the claim right that arises in the regime of participation in acquired property as a result of each spouse having a right to half the value of the other spouse's acquired property. The participation claim is the core mechanism of the legal property regime.

2. Contribution Share Claim (Katkı Payı Alacağı)

This is the right to demand the return of the financial contribution made by one spouse to the acquisition or appreciation in value of an asset belonging to the other, applicable in situations where the separation of property regime is valid or in the pre-2002 period.

3. Value Increase Share Claim (Değer Artış Payı Alacağı)



This concept was introduced by the Turkish Civil Code No. 4721. If an increase in value has occurred in any personal or acquired property of one spouse as a result of a contribution made by the other spouse, they can demand a share of this increase.

Special Rules for Marriages Before 2002

Before the new Turkish Civil Code came into effect on January 1, 2002, the legal property regime was the separation-of-property regime. Therefore, for spouses married before 2002, property division in Turkish divorce is conducted according to two separate periods:

- **Pre-2002 Period (Separation of Property):** For assets acquired before 01.01.2002, the separation of property regime applies. The asset is considered to belong to whichever spouse it is registered to.
- **Post-2002 Period (Participation in Acquired Property):** Assets acquired from 01.01.2002 until the date the divorce lawsuit is filed are subject to the regime of participation in acquired property.

The Property Division Process: Step-by-Step

We can explain the stages of property division as follows:

1. **Creating an Asset Inventory:** First, all assets acquired during the marriage and the parties' personal property are identified.
2. **Valuation:** The current market (fair) values of the acquired properties at the time of liquidation are determined by the court.
3. **Deducting Debts:** Any existing debts related to that asset are deducted from each acquired property item.
4. **Calculating the Residual Value:** The residual value is the remaining total for each spouse after debts are subtracted from the sum of their acquired properties.
5. **Determining the Participation Claim:** Under the law, each spouse has a right to over half of the other spouse's residual value (TMK Art. 236).
6. **Payment:** After the participation claim is determined, the court rules on who will pay what amount.

Special Circumstances Influencing Property Division

Aside from the general rules, there are also some special situations and exceptions that directly affect property division in Turkish divorce:



- **Divorce Due to Adultery and Attempt on Life:** If the divorce lawsuit has been filed due to at-fault behaviors like adultery or an attempt on life, the judge may reduce or entirely eliminate the at-fault spouse's share in the residual value.

- **Debts:** The property division lawsuit concerns only the division of wealth; it does not eliminate the spouses' joint debts to third parties (such as banks).
- **Property Regime Contracts:** If spouses have chosen a regime such as separation of property or community of property, the division is made according to that regime.
- **In Case of Death:** Marriage ends with the death of one of the spouses. The surviving spouse receives both their property regime claim (participation claim) and their inheritance share.

Frequently Asked Questions (FAQ)

I didn't choose any property regime at the time of marriage. Which regime am I subject to? If no different property regime agreement was made between spouses at the time of marriage, the default provisions of the regime of participation in acquired property will apply to **property division in Turkish divorce**.

Can I change the property regime I am subject to after getting married? Yes, you have the right to choose another regime, such as the separation of property, by entering into a notarized property regime agreement during the marriage.

Are assets acquired after a divorce lawsuit is filed included in the property division? The property regime between spouses ends exactly when the divorce lawsuit is filed. As a general rule, an asset acquired after the divorce lawsuit is filed is not included in the division.

Can a cheating spouse be deprived of marital property? If a divorce case has been filed due to at-fault behaviors like adultery, in the subsequent property division in Turkish divorce lawsuit heard after the primary case is finalized, the judge can reduce or entirely eliminate the at-fault spouse's share of the residual value.

My spouse passed away. Do I have rights in the context of property division beyond my inheritance rights? Yes. If the marriage ends due to death, the surviving spouse takes the participation claim first, which is a debt of the estate. After taking the participation claim, the surviving spouse also holds an inheritance claim under the inheritance provisions.