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Dividing Stocks in Divorce

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If your spouse has stocks, they will need to be identified as marital or non-marital, valued and divided or offset with another marital asset.

Public stock is simple to value. Once a valuation date is determined, the answer lies in the market's figures. Assuming the stock is all marital, and the parties agree to divide it equally, I recommend the parties work with an accountant or representative from the financial institution to ensure the division is as equal as possible considering the cost basis, so one party is not left with a major tax liability.

Restricted stock units (RSU) can be a bit trickier because there is no market price to look up. RSUs are a common incentive for employees in private companies. They are granted to employees to incentivize them to grow with the business. RSUs do not have a value when they are granted; instead, they have a vesting schedule. Once they vest, they have value.   The vesting schedule is important in your divorce and your jurisdiction. For instance, if the RSUs were granted before the marriage and vested after the marriage, there is some marital component, and you may need an expert to trace the amount. What comes up more often is when the RSUs are granted during the marriage but do not vest until after the marriage. Some states consider the unvested RSUs marital, and some do not. RSUs are also taxed, so that will need to be considered when dividing or negotiating RSUs.

There are several ways to divide stocks in a divorce. The spouse who has the stock may keep them in exchange for another marital asset or offsetting the marital estate somehow. The parties may decide to divide the public stock. The parties may agree to equally divide the net value of the stock if, as and when it vests. Some parties agree to sell and divide the stock prior to divorcing for tax purposes. There are many other ways to slice the stock pie, but the best option will vary in different divorce cases. Bottom line is that stocks can become complex, and you need an attorney who knows to ask the right questions, gather the right documents, and reach out to a competent accountant when necessary.