

Property Division

Basics - Property or asset division is a central issue in most divorces. Under NH law, *all assets* belonging to either or both spouses are marital property to be divided. Even an asset held or titled in one spouse's name may be divided with or given to the other spouse.

"Property" in the divorce sense includes *everything* - real estate, household contents, bank accounts, stocks and bonds, vehicles, pension and other retirement benefits (even if not yet vested).

How Decisions are Made - If the parties reach an agreement which then become the basis of the divorce, they can divide the assets any way they wish. Most divorcing couples (over 90%) do work out an agreement on property division and the other divorce issues. Because if there is no agreement, the court will decide the property division, the court standards often influence agreements.

If the Court Decides - If the court decides how to divide the assets because the divorcing couple cannot agree, the court would use the standards explained below.

The law states that the property division should be *equitable* or fair. What is equitable depends on the family situation. The law *presumes* that it is fair for *each spouse to get 50%*. Note that each asset need not be divided equally; instead the total value of all property (minus debts) is divided.

In some cases, a 50/50 split is *not* fair, and the division may instead be 45/55 or 40/60. The law specifies 15 factors to be considered in evaluating whether 50/50 is fair:

- A. The length of the marriage.
- B. The age, health, social or economic status, occupation, vocational skills, employability, separate property, amount and sources of income, needs, and liabilities of each spouse.
- C. The opportunity of each spouse to acquire capital assets and income in the future.
- D. The ability of the primary residential parent (if any) to be employed without substantially interfering with the interests of the children.
- E. The need of the primary residential parent (if any) to occupy or own the marital residence and to use or own the household contents.
- F. The contribution of either spouse to the growth or the reduction in value of the property.
- G. Significant disparity between the spouses in their contributions to the marriage, including contributions to the care and education of the children and the care and management of the home.
- H. Any contribution made by one spouse to help educate or develop the career of the other, or any interruption of either spouse's educational or personal career opportunities for the benefit of the other's career or the marriage or children.

- I. Pension or retirement rights acquired prior to or during the marriage.
- J. The tax consequences.
- K. The value of property covered by a valid premarital contract.
- L. The fault of either party.
- M. The value of any premarital property.
- N. The value of any property acquired by gift/inheritance.
- O. Any other factor that the court considers relevant.

Length of Marriage - In all but short marriages, a 50/50 split is the most common outcome. If the marriage is short and childless, the goal of the court in property division is to get each spouse back to the financial position he/she had at the time of the marriage. In very long marriages, say over 25 years, in which the only substantial asset is the family home, a 50/50 split is expected.

Fault - Most divorces are based on irreconcilable differences. However, if the court decides the marriage breakdown is due to fault (adultery, cruel and abusive treatment, etc.), the innocent spouse may get more than half the assets. For fault to be considered, it must meet the following 2 part test:

1. Fault has caused the breakdown of the marriage; **and also**
2. The fault must have either:
 - a. Caused substantial mental or physical harm to the innocent spouse; **or**
 - b. Caused substantial loss of money or resources.

Other Common Factors - Several of the 15 factors usually favor women, especially those who have stayed at home or worked only part-time in order to care for the children. If property has been brought into the marriage or inherited, the "owner" may get most of this property. However if the marriage is long or the assets has been treated as joint property, the source of the property is not considered important.

Remember - If you and your spouse agree on how to divide your assets (and debts), the court will approve your agreement. Most divorcing couples (+90%) do work out an agreement on property division. The factors described above apply when the property division is contested and decided by the judge.

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