

Who Get's What? Property Division in Michigan

As an attorney I take many calls from potential clients about divorce and when this happens the most important issue we talk about, after custody of the children, is how the property will be divided. Whenever the question of property division comes up there is never a good answer to give, because there is no set formula set. Of course, this does not mean the courts are completely helpless.

Above all else, when dividing property, the court must strive for equity between the parties. Many potential clients here 'equity' and immediately think 'equality' but this is not what the courts look for. In fact, one of the *last* concerns of the court is that the division be equal. The equity they seek is that the division of property be fair to the parties and in this, the court has broad discretion.

To help the court determine what is equitable they consider the following factors.

- 1) The court must consider the length of the marriage. It should be noted that the shorter the marriage, the less equal the court is inclined to be.
- 2) The court must consider the needs of the parties and their earning abilities. For example, if a man and a wife own a home free and clear and she has not worked throughout the marriage because the husband wanted a stay at home wife, the court may be inclined award her the entirety of the home to make up for her long-absence from the job market and its effect on her earning potential.
- 3) The court must consider the cause of the divorce, including the relative fault of the divorce. Though Michigan is a no-fault state, fault of the parties is relevant to a division of property and in cases where one party's infidelity caused the divorce, it is not unheard of for the other party to take a greater share of the property.

The three examples above are limited and could not possibly cover every possible situation but they do illustrate some of the things the court considers when it decides on how to divide property. The plain fact is that the court has great leeway in assigning weight to any given factor or to none of them, but it is important to note that when the court strives for equity it must also take pains to avoid *inequity*. Inequity would occur where the court uses one of the factors to punish a party for their behavior and the court should only make for an unequal distribution of property in limited instances. This is usually the point made to a party aggrieved by infidelity, that the court isn't necessarily going to leave your spouse high and dry just because they cheated on you.

Property division is always a bit of a frightening thing but keeping in mind the factors above it might help ease a lot of the nerves. As always, though, you should consult an attorney before making a decision about your future.

Sources cited

MCL 552.19

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