

Dividing Debts in the Michigan Divorce

A divorce, no matter the state you're in, does three main things: 1) determines custody of the children, if any; 2) divides any marital property; and 3) divides any marital debts. While the first two can be thorny it is the third that can open a real bag of worms and is what we shall focus on. Still, while we focus on the third it should be noted that the only way an equitable division of debts can occur is in consideration of the division of assets. As such it is imperative that anyone considering a divorce should first consult with an attorney.

When dividing the debts of the parties to a divorce, the court behaves much as it would when dividing assets: it attempts to achieve equity. This should be simple enough, give each side half of the debts and send them on their way, but real difficulties can enter the picture when we consider not only the nature of the debts but also who's name the debts are in.

It is a good idea to consider the two types of debt and what they do. The first type is the secured debt, which most usually associated with a mortgage or a car loan. Typically this type of debt has as its collateral the item being purchased, meaning that, should you fail to repay the loan, the bank may repossess the property. From this perspective it is always good to remember that until you've finished paying the loan, the bank is the true owner of the property.

The second type of debt is the unsecured debt or debt that was given with the collateral of the mere hope you would repay. Failure to repay doesn't lead to repossession but forces the creditor to seek repayment through the collection process. Most notably credit cards are unsecured debt, though medical bills, student loans or any other type of debt that is not associated with a physical *thing* falls into this category.

Dividing unsecured debts by the courts is easy and is done much as assets. Just as assets gained during marriage are deemed marital assets and divided evenly, so too are debts and each party shall assume his or her own equitable portion of the debt, whether or not they directly incurred it. However, these leaves open the problem of one spouse paying debts that are wholly in the name of the other spouse and the possibility of defaulting on that debt requiring post-judgment actions for recompense, which can be a fairly hairy situation and are best left for another time, though anyone contemplating divorce should be aware of the situation.

Dividing the secured debts would seem to be a simple matter as well, but as always there are difficulties. Usually, when one party takes a piece of property that is subject to a debt, he takes the debt as well. This is fairest and sanest solution, but naturally it might carry other problems with it, such as the division of the equity in the property as an asset and how it affects the debt; the possibility that the property actually depreciates in value later and how that ties into the equity; and the sometimes-difficult requirement that the party who takes the property may have in refinancing in his or her name only, which may not be possible without the second source of income. Sometimes, in these situations, the simplest way to deal with property subject to a secured debt is simply to liquidate the asset, satisfy the debt from the proceeds and split the remainder.

Secure and unsecured debts can prove difficult but the real difficulty is deciding which debts are marital debts, and therefore ripe for division, and those which are not and should therefore be assigned as wholly the responsibility of one party or another. The court has much leeway in deciding what debts or non-marital and historically these have included gambling and drug debts, debts associated with a legal defense to a criminal charge, tax debts and student loans. However, the courts always struggle with how to handle these categories because while these debts may have been incurred by one party or the other if the opposite party enjoyed any of the spoils of these debts, especially student loans, a case can be made to justify including them for division.

The issue of debts in a divorce is clearly a sticky one and there is no clear cut answer to how the court will treat them. Still, while it might be a sticky situation, it is useful to have full knowledge of these issues before going into a divorce.