

HOW THE COURT DIVIDES THE PROPERTY IN DIVORCE

What Property Can the Court Divide?

- In Vermont, the courts will divide all marital property at the time of your divorce. Virtually all property is considered to be marital property. For instance, property, which you or your spouse inherits, is considered marital property, and property given to you or your spouse by a family member is also considered marital property. The court can also divide property which either spouse owned before the marriage. It does not matter in whose name the property is held.

Who Decides How the Property Should be Divided:

- All marital property will be divided equitably. You and your spouse are in the best position to decide what is equitable or fair, and you should make every attempt to agree on a division. If you leave the decision to the judge, the judge will divide the property in a way that seems fair to the court. An "equitable division" of property does not necessarily mean a 50/50 split. Sometimes the courts will presume that the property should be split approximately equally, in the absence of the other factors.
- If a piece of property has been in the family of one spouse for many years, it is likely that the judge will order that piece of property to remain with that spouse. If you cannot agree how to divide other personal property, like kitchen items and furniture etc., it is likely that the judge will attempt to make your two new households functional by giving you each some property, unless the marriage is of very short duration.

How the Court Decides How the Property Should be Divided:

- The court, by law, has to look at several factors to determine how the property should be divided. Those factors are the following:
 1. The length of the marriage;
 2. The age and health of the parties;
 3. The job and source and amount of income of each of the parties;
 4. The vocational skills and employability of each spouse;
 5. The contribution by one spouse to the education, training, or increased earning power of the other;
 6. The value of all property interests, liabilities, and needs of each party;
 7. Whether the property settlement is to be awarded instead of, or in addition to, spousal maintenance;
 8. The opportunity of each party to obtain future capital assets and income;
 9. The desirability of awarding the family home or the right to live there for reasonable periods to the spouse having custody of the children;
 10. The party through whom the property was acquired;
 11. The contribution of each spouse in the acquisition, preservation, and depreciation or appreciation in value of the respective estates, including the non monetary contribution of a spouse as a homemaker; and
 12. The respective merits of the parties. (e.g., whether either party was abusive, or committed adultery, or was an alcoholic).

Which factor may be more or less important depends on the individual case, and the judge does **not** have to place equal weight on each factor.

How to Prepare for a Contested Hearing on Property Division:

- If you and your spouse cannot agree on how to divide all your property, you still may have some agreement, which you can put in writing and file with the court before the hearing. With personal property (cars, furniture etc.) you should write a list of what you cannot agree upon and what you believe the market value is for each item. If you cannot agree on the market value of cars, boats, or other expensive property, you may want to get an appraisal and bring the appraiser as a witness to the hearing.
- You should prepare what you want to tell to the judge in the same manner as the factors identified above, starting with how many years you have been married, your age and health etc. You should bring documentation to court that shows the value of the property, such as your house appraisal, bank statements, pension or retirement or other investment statements. You should also bring documentation about the debts on the property and other debts from your marriage.

Property Division is Final and Cannot be Modified:

- Unlike child support and parenting plans, the property division **cannot** be changed after the divorce is final. This means that once your divorce is granted, the division of property is final. It is important, therefore, that your property division is not tied to your child support or your parenting plan.

**You can obtain helpful information, as well as court forms at:
www.VermontJudiciary.org.**