

(REVISED 5/01)
HAMPSHIRE PROBATE AND FAMILY COURT

6

DIVISION OF MARITAL
PROPERTY



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Massachusetts General Laws Chapter 208 Section 34

The following is a description of the way in which a judge divides marital property in Massachusetts. "Marital property" is a legal term which describes property which was acquired by you and/or your spouse during the marriage.

The law allows a judge to treat all of the property of both spouses, which was acquired during the marriage, as marital property, no matter who holds legal title to the property.

Examples of types of marital property are (but are not limited to): real estate, retirement benefits, pensions, profit sharing plans, annuities, deferred compensation plans, insurance benefits, stocks, bank accounts and businesses.

A judge is required to make an "equitable distribution" of your marital property as part of your divorce. "Equitable distribution" is a legal term which means a fair division of your marital property. A fair division does not always mean an equal division. If you reach an agreement for division of your marital property, the judge will consider this agreement and may approve it if she or he finds that it is fair and reasonable for both parties.

In determining an equitable division of marital property, the judge considers the following factors:

1. The length of the marriage;
2. The conduct of the parties during the marriage;
3. The age of the parties;
4. The health of the parties;
5. The station of the parties;
6. The occupation of the parties;
7. The amount and sources of income of the parties;
8. The vocational skills and employability of the parties;
9. The estate, liabilities and needs of each party;
10. The opportunity of each party for further acquisition (inheritance);
12. The present and future needs of the children of the marriage;
13. The contribution of each party in the acquisition, preservation or appreciation in value of the marital property; and
14. The contribution of each of the parties as homemaker in the family unit.

In order to make a fair distribution of marital property, it is important to determine the fair market value of each major asset. Some assets are easy to value and others are not. Some assets such as businesses, inheritances, trusts and some retirement plans present complex problems in a divorce.

Under Massachusetts law, the division of marital property is final and cannot be changed or modified unless both parties agree to the change.

There are many reasons to obtain legal advice about this complicated aspect of your divorce. A lawyer can help you identify and value marital property and can advise you about any tax or other consequences of the division. Many retirement plans require a complicated document to effectuate the transfer called a Qualified Domestic Relations Order or QDRO. A lawyer can draft these documents for you.



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