

Division of Marital Property During Divorce

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As part of the divorce process, the court will divide the property of the parties. The court will assign the non-marital property of either spouse to that spouse. With regard to the marital property of the parties, the court will consider several factors before assigning any interest in the marital property to either spouse. Marital property includes all debts, assets and other obligations acquired by either party subsequent to the marriage that is not otherwise considered non-marital property. Stay tuned for an upcoming article for a more detailed discussion regarding the classification of non-marital property and marital property.

The law in Illinois does not require that marital property be divided “equally” (50/50). Instead, the law requires that the marital property be divided “equitably”. This means that at trial, the division of marital property is more than just a numbers game. In assigning interest in marital property, the court considers the following factors (but shall not consider marital misconduct):

1. Each party's contribution to the acquisition, preservation, or increase or decrease in value of the marital or non-marital property, including
 - (i) any decrease attributable to an advance from the parties' marital estate under subsection (c-1)(2) of Section 501;
 - (ii) the contribution of a spouse as a homemaker or to the family unit; and
 - (iii) whether the contribution is after the commencement of a proceeding for dissolution of marriage or declaration of invalidity of marriage;
2. The dissipation by each party of the marital property, provided that a party's claim of dissipation is subject to the following conditions:
 - (i) a notice of intent to claim dissipation shall be given no later than 60 days before trial or 30 days after discovery closes, whichever is later;
 - (ii) the notice of intent to claim dissipation shall contain, at a minimum, a date or period of time during which the marriage began undergoing an irretrievable breakdown, an identification of the property dissipated, and a date or period of time during which the dissipation occurred;
 - (iii) a certificate or service of the notice of intent to claim dissipation shall be filed with the clerk of the court and be served pursuant to applicable rules;
 - (iv) no dissipation shall be deemed to have occurred prior to 3 years after the party claiming dissipation knew or should have known of the dissipation, but in no event prior to 5 years before the filing of the petition for dissolution of marriage;
3. The value of the property assigned to each spouse;
4. The duration of the marriage;
5. The relevant economic circumstances of each spouse when the division of property is to become effective, including the desirability of awarding the family home, or the right to live therein for reasonable periods, to the spouse having the primary residence of the children;
6. Any obligations and rights arising from a prior marriage of either party;
7. Any prenuptial or postnuptial agreement of the parties;

8. The age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, and needs of each of the parties;
9. The custodial provisions for any children;
10. Whether the apportionment is in lieu of or in addition to maintenance;
11. The reasonable opportunity of each spouse for future acquisition of capital assets and income; and
12. The tax consequences of the property division upon the respective economic circumstances of the parties.

750 ILCS 5/503(d)

The list outlined above is not exhaustive. The court can consider any relevant factors in making a determination as to the division of marital property. The court has previously considered the fact that it is important to divide assets in a way that will reduce conflict between the parties and discourage future litigation. *In re the marriage of Schlichting*, 2014 IL App 2d (140158).