



PROPERTY DIVISION IN A DIVORCE: HAVE A PLAN

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No one plans on getting a divorce when they get married, but one of every two marriages will end up that way. If your marriage is one of those that has not worked, you need a plan. The decision to get divorced is a difficult one which impacts your emotional stability and your social and financial security. You will want to be in control of as many aspects of the divorce process as is possible.

In a divorce, assets must be identified, valued and then divided. They are divided "equitably" in Michigan which does not necessarily mean "equally" but rather in a way that is fair to both parties. A court will commonly take into account these factors in dividing property:

- The source of the contribution toward the acquisition of property;
- The length of the marriage;
- Your needs and the needs of your spouse;
- Your children's needs;
- The earning power of the parties; and
- The cause of the divorce.

How to Plan When You Begin to Think of Divorce

Gather asset information in an orderly way. Take an inventory of your family's property. Use property checklists found on the internet, in the library and in bookstores.¹ Copy property documents such as mortgages, bank and brokerage statements and tax returns. Make an inventory of safe deposit boxes.

Look for hidden assets or assets that have been wasted, such as transfers to relatives, even children², gambling losses or large expenditures on paramours. This category of transfer is called "dissipation" of assets. Dissipation means, generally, a deliberate attempt by a spouse to transfer or hide an asset so that it will not be included in the marital property division.

Other things that you can do to help yourself are to have access to savings of your own for meeting household and



personal expenses and for being able to hire an attorney. You should have a credit card in your own name. Take your birth certificate and passport out of joint files and create your own file. Check your future health insurance needs, cost and availability.

Don't forget assets. Often assets, such as perquisites of employment, pensions, 401ks, IRAs, cemetery plots and the like are omitted from information given to your attorney. The more information you can obtain about assets, the less it should cost you in professional time to obtain it.

All debts must also be divided when dissolving a marriage. Find balances due on all of your debts. Get a copy of your credit report. Consideration is given to the type of liability and the circumstances under which it arose. Factors influencing the property division are also applied when dividing obligations.

Most credit and charge account agreements provide for joint liability for any charges added to joint accounts. To end your liability, creditors should be instructed (in writing) to remove your name from or, alternatively, to close all joint accounts. You will remain liable on charges made before this written notice. If you wish to maintain credit with certain creditors, you should open a separate account.

If you have an estate plan which was done with your spouse, you may want to change it. If you have signed a power of attorney which allows your spouse to act on your behalf, you will want to consider revoking it.



What Happens When Your Divorce is Pending

Time is spent defining the issues in the divorce and finding ways to resolve them. It is during this period that hard questions must be asked and answered. A number of financial documents are required to get a complete picture of your assets. The net worth and the general financial status of the family are established. Forms may be sent to both spouses asking for a sworn statement of complete financial information. Experts such as appraisers, accountants or actuaries (if pensions are involved) may be needed to determine financial information. Depositions (sworn statements) may be taken from you, your spouse and others to obtain more information about your property.

When all the financial information has been collected, you and your attorney will set the goals you seek in your divorce. A proposed property settlement should be drafted for you to study, and your lawyer should advise you of its likelihood of acceptance.

If settlement is reached, you and your spouse will be asked to sign a property settlement agreement. If there is no agreement, the court may appoint a mediator to assist you. The mediator may be able to help you reach an agreement, or otherwise make a recommendation to you, if no agreement is reached. If no settlement is reached there will be a trial which results in the judge making the decisions about how your property will be divided. This is an expensive alternative and it is not usually the best way to obtain the assets you would choose to receive.

If you decide to settle your property issues, as most parties do, you and your attorney will put the settlement on the record before the court. This procedure is very important. Often due to the stressful nature of the situation you may not understand the agreement fully. The agreement you make on the record will be binding and final. Be sure you understand the agreement before agreeing to it. If you do not understand any part of it, stop the proceeding and have your attorney explain the entire agreement, until you understand it and can agree to it, even if it means coming back to court at a different time to get divorced.

What to do Regarding Property Once the Divorce is Final

Things you or your attorney need to do:

- Get signatures on deeds, stock transfers, bank account forms;
- Record deeds as required by the judgment;
- Review your estate plan for any necessary changes;

- Review your auto insurance and transfer auto titles where necessary;
- Notify administrators of various retirement plans regarding Qualified Domestic Relations Orders and provide them with a copy;
- Transfer real estate title to any property your former spouse is to receive;
- Start the process of refinancing property if that is part of your agreement;
- Transfer keys and ownership to house, autos, and safe deposit boxes. Transfer personal property, jewelry, collectibles and the like;
- Obtain health insurance information for continuous coverage and/or COBRA coverage;
- Be sure insurance beneficiaries are changed where necessary;
- Pay experts;
- Transfer cemetery plots

While it may be the last thing you want to do, taking care of these final details will avoid future trouble and make it easier to obtain closure on this chapter of your life.

Endnotes

1. Sample of property checklists you will need: tax returns and payroll stubs (five years); business tax returns; business financial statements, appraisals; records regarding any other received income (i.e., investment property, rental/lease agreements, stock dividends, profit sharing plans, pension benefit payments); records regarding monthly living expenses; pre and post marital (nuptial) agreements; previous divorce judgments/settlements; documents pertaining to savings accounts, checking accounts, certificates of deposit, mutual funds, cash management accounts, stock certificates, safe deposit box inventory, brokerage firm accounts, credit union accounts, equity line accounts, commodities, collections, titles; insurance policies: life, automobile, homeowners, personal umbrella, liability, disability, renter's health; employee group insurance benefits: medical, life, disability; benefits: expense accounts, auto allowance, cafeteria plan, sick pay, stock options, travel allowances, bonuses, deferred compensation; retirement plans: 401k plans, money purchase plans, employee stock option plans; statements relating to inheritances, personal injury awards; real estate records: deeds, notes, escrow amounts, appraisals; household expenses; intellectual



property information on patents, copyrights; royalties,
cemetery plots and annual social security mailing

2. *Thames v Thames*, 191 Mich App 299, 477 NW2d
496 (1991)

