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We want you to know...

Dividing Assets and Liabilities in Divorce

This is a very brief summary of a complex area of law and it is not a substitute for legal advice. While certain aspects of property division are highlighted here, this is not a complete discussion of all aspects of property division. Before making any decisions about dividing property, speak to a knowledgeable divorce attorney.

New Hampshire is an equitable division jurisdiction. An equal division of the property is presumed to be equitable, but certain facts may change the proportionate share awarded to each party. Property includes real estate, personal property, business and other intangible rights, such as pensions and rights to intellectual property. For purposes of valuation all property is included in the marital estate without regard to title or other indicators of ownership.

The court may, in its discretion, make an unequal division in some cases. When doing so, the court must make findings that support unequal division. The statute recites several circumstances that allow the court to award one party a higher percentage of the estate. Among the considerations are the ability of one party to earn more than the other over time, the greater need on the part of one of the parties, the expenses of maintaining a home for children, the sacrifices of one party to benefit the other party's career path, certain tax considerations, and the length of a marriage.

The court often considers the source of the property when making a final award as to possession or ownership of the property. Generally the court will award family-derived properties such as shares in summer homes or family heirlooms to the person whose family owned or passed on the family property. The value of the property may or may not be included in the final proportionate share, depending on the circumstances of the case.

The other side of property distribution is the assignment of debt. Generally the court will consider debt to be equally divisible, much like assets. If one party has a greater ability to pay a certain debt, or more stake in the payment (such as a loan on that party's car) the court will often award that debt accordingly. The existence and ultimate responsibility for debts is taken into consideration when the court apportions the property. Assignment of debt does not relieve the co-debtor from the obligation to pay; creditors may pursue either responsible party without regard to the court's order in the divorce case. When a party fails or refuses to pay an ordered debt, the remedy is to return to the divorce court for sanctions.