

Divorce Property Division & Child Custody: Understanding the Basics in Michigan

Dividing marital property and determining child custody rights are two important parts of the divorce process. Custody hearings can also occur separately from divorce proceedings. Here is an overview of property division and custody.

Property Division

1

What is the Marital Estate? Think “Marital” vs. “Separate”

- **The Marital Estate** is property (and debt) that you and your spouse **acquired during your marriage**. It gets divided in your divorce.
- Property one of you **owned before marriage** is considered “**separate property**” but sometimes it is still divided in a divorce.

2

What is “equitable distribution”?

Equitable distribution is the division of the marital estate (property and debts) in a divorce. Courts may divide the marital estate 50/50, but they do not have to if there is good reason for a different split. Courts can consider domestic violence and marital fault (misconduct) when deciding distribution.

3

What happens with a jointly owned home? There are different possibilities. Here are two examples:

- Example A: Spouse A moves out of the marital home and Spouse B stays, retaining the debt and paying Spouse A their marital share of the equity of the home. Spouse B becomes the sole homeowner.
- Example B: the house must be sold because neither spouse can afford it, or neither one wants it. The spouses then divide the net sale proceeds.

4

What about retirement accounts?

Retirement accounts can be considered marital property with respect to amounts earned during the marriage. These amounts may be divided when the divorce is finalized. This division often requires a separate order: Qualified Domestic Relations Order (QDRO). QDRO paperwork and processes are very complex. Seek legal help for them.

5

What about spousal support?

Spousal support can be awarded either by agreement of the parties or by the judge. Factors that judges may consider include: the length of the marriage, the spouses’ financial means, the spouses’ financial and living needs, their ages, their health, and why the marriage broke down.

Child Custody

1

“Physical” vs. “Legal” Custody

- Physical custody refers to which parent a child lives with. Courts may either a) award one parent sole physical custody—often giving the other parent some visitation rights—or b) award both parents joint physical custody.
- Legal custody is the right to make important decisions about your children, like schooling, religion, and major medical decisions. Courts may either award a) one parent sole legal custody, or b) joint legal custody—meaning both parents must communicate and agree on major decisions.

2

Establishing Custody - Common Legal Terms and Concepts

- **Affidavit of Parentage:** when a child is born to unmarried parents, both parents often sign an Affidavit of Parentage agreeing that they are the legal parents.
- **Order of Filiation:** a court order determining that a person is a child's legal parent. For example, a child's father may provide DNA evidence to get an Order of Filiation establishing parentage.
- **Children born in marriage:** a child born to a mother during a marriage is presumed to be the child of the other spouse.

Note: all of these can be changed by court order.

3

Understanding the "Best Interest of the Child" Standard

This is the legal standard courts use to make custody determinations. Think of it as the judge asking, “What arrangement is ideal for the child, serving their best interests?”

Judges use 12 factors to determine best interests. They may give some factors more weight than others. Here is a summary:

1. Love, affection, and other emotional ties that exist
2. Ability to give the child love, affection, and guidance and to continue the education and raising of the child in his or her religion or creed, if any
3. Ability to provide food, clothing, medical care (or other remedial care permitted under state law in place of medical care), and other material needs
4. How long the child has lived in a stable, satisfactory environment, and how important it is to maintain continuity
5. Permanence, as a family unit, of the existing or proposed custodial home(s)
6. Moral fitness of the parties involved
7. Mental and physical health of the parties involved
8. Home, school, and community record of the child
9. The reasonable preference of the child, if the court considers the child old enough to express preference
10. Willingness and ability of each party to promote a continuing parent-child relationship between the child and the other parent or the child and the parents. (For this factor, courts do not criticize one parent's reasonable actions to protect a child or themselves from sexual assault or domestic violence by the other parent.)
11. Domestic violence, regardless of whether the violence was directed against or witnessed by the child
12. Any other factor considered by the court to be relevant