PROPERTY DIVISION AND MAINTENANCE

DON’T EVENT THINK ABOUT TAKING THE

Three Kinds of Property Division

Property division award is not subject to post divorce modification. This is because they divide the property based on the equities at the time of the divorce.

- **Community Property**

  Equal division of the marital property

- **Equitable Distribution**

  Requires a fair distribution of marital property

- **Marital Property**

  All property acquired during the marriage and subject to equitable distribution

  Non-marital or separate property may be subject to equitable distribution if appreciation can be attributable to the other spouse or if comingled.

Exceptions to Marital Property

- Property acquired before the marriage
- Property excluded by the party's valid agreement
- Property acquired by gift or inheritance
- Property a party sold, granted, or conveyed in good faith and for value before the date of separation
- Property to the extent it has been mortgaged or otherwise encumbered in good faith before the date of final separation
- Any award settlement payment received for any cause of action or claim that accrued before the marriage regardless of when payment was received.

Factors in Distribution of Marital Property

(1) length of marriage;
(2) prior marriages;
(3) age, health, earnings, earning potential, liabilities, needs of both spouses;
(4) contributions to education;
(5) needs for future acquisitions;
(6) income, medical needs, retirement of both spouses;
(7) contribution to increases in marital property;
(8) value of separate property);
(9) reduction in valuation in marital property by one spouse;
(10) standard of living;
(11) economic circumstances of each spouse at time of divorce; and
(12) custodianship of any minor children.

Treatment of Specific Types of Marital Property

1. Retirement and pension benefits are subject to equitable distribution if acquired during the marriage

2. Personal Injury Claims

- Considered marital property and subject to equitable distribution if the cause of action accrues during the marriage.
- It's separate if it is compensatory for pain, suffering, disability, and loss.
- Loss of consortium to other spouse.
- Awards for lost wages, loss of earning capacity, and medical expenses are split between spouses.
- Calculate award based on time when accident happened and the termination of the marriage.

3. Professional Good Will

- Value of your reputation as a professional. That good reputation has a value. It is considered marital property and subject to equitable distribution and needs to be valued and is done by expert testimony.

Spousal Maintenance: Alimony

Factors

- financial resources
  - This includes property awarded in divorce and child support
- standard of living
- time to find new employment
- length of marriage
- contribution that spouse made to marriage, particularly if enhance earning potential of other spouse
- age and health of both parties
- marital misconduct

Types of Support

- lump sum – one time fixed amount, not subject to modification
- permanent – award of alimony for rest of spouse's life
- limited duration – awarded when marriage was short or medium term length and it is usually awarded when there's a need for economic support in the short term.
- rehabilitative – while spouse receives education, training, while spouse trains to rejoin workforce
- reimbursement – designed to put the spouse who sacrificed during course of marriage and result in reduced standard of living.
- palimony – couple who wasn't married but in long term relationship and lived together – look to courts to get some sort of alimony-like payment after dissolution of their relationship.

Modification of Support

- Spousal support can be modified even if it is permanent. The person seeking the modification has the burden of showing the significant change in circumstances; either in the needs of the spouse receiving or in the financial abilities of the obligor.
- Generally, death will end support obligations.
- Remarriage will generally end support obligations
- Cohabitation – If receiving spouse lives with a non-family member, the paying spouse can seek modification.
- Retirement – when obligor retires, can seek modification.