



**Amaral & Associates, P. C.**

ATTORNEYS AT LAW

## **Property Division in a Divorce**

### **Q: What is marital property?**

A: Massachusetts law has a very broad definition of marital property. It defines marital property as property owned by either or both spouses, whether acquired during the marriage, or prior to the marriage. This means that if property is in only one spouse's name, or was bought before the marriage, it is marital property and subject to property division in a divorce.

### **Q: What kinds of property are included property division in Massachusetts?**

A: The short answer is EVERYTHING. This can include:

- Real estate
- Bank accounts
- Stocks and bonds
- Retirement accounts
- Pensions
- Investment and brokerage accounts
- Personal Property
- Vehicles (including airplanes, boats and yachts and recreational vehicles)
- Business interests
- Interests in trusts
- Inheritance
- vested and nonvested benefits rights
- military retirement benefits
- Profit-sharing
- Annuity
- Deferred Compensation
- Insurance policies (with cash surrender value)
- coin collections
- frequent flier miles
- Professional baseball season tickets
- country club memberships
- Artwork
- Lawsuit proceeds
- Timeshares
- Income tax refunds

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**Q: How does the law decide how the property is divided in a divorce?**

A: There are several factors that must be considered in property division. They are

- the length of the marriage
- the conduct of the parties during the marriage
- the age of each spouse
- the health of each spouse
- the station in life of both spouses
- the occupation of each spouse
- the amount and sources of income for each spouse
- the vocational skills of each spouse
- the employability of each spouse
- the estate of each spouse
- liabilities and needs of each of the parties,
- the opportunity of each for future acquisition of capital assets and income,
- and the amount and duration of alimony, if any, awarded
- the present and future needs of the dependent children of the marriage
- the contribution of each of the parties in the acquisition, preservation or appreciation in value of their respective estates
- the contribution of each of the parties as a homemaker to the family unit

**Q: Am I guaranteed to get half of everything?**

A: No. Massachusetts is an equitable division state, and not an equal division state. The court will look at the factors for property division to reach an equitable division. It is not uncommon for property division to be 50/50 or close to 50/50, but it is not guaranteed.

**Q: Who gets the house?**

A: It depends. If only one spouse wants the house, and can afford to keep it **and** pay the other spouse his/her fair share of the equity in the house, then he/she can keep the house. If both spouses want to keep the house, they can negotiate to see who will keep it. If they cannot agree, it is typically sold. If neither spouse wants the house, it is typically sold, and the sale proceeds are split between the houses.

**Q: My spouse cheated. I assume he/she gets nothing?**

A: No, that's not true. Massachusetts has no-fault statutes for divorce, which is the most common grounds for divorce. That means a cheating spouse will still get his/her equitable share of the marital estate. Because adultery is only considered as *part of* the factor of "conduct of the

parties during the marriage” this is only one of many factors that will be considered when a spouse has cheated.

However, if a spouse spent significant money and assets on the affair, that will be relevant in the property division, and could mean the cheating spouse gets fewer assets in the property division.

**Q: When is marital property divided?**

A: Property division is usually one of the last issues addressed in a divorce. This is because you cannot revisit or modify property division after your divorce is finalized. The court wants to make sure you are certain that you have completed all the discovery you want to complete so you have all the relevant information you need to decide how to divide marital property. Once the discovery is done, then you can start dividing marital property.

***Have any further questions about property division?***

***Call the attorneys at Amaral & Associates, P.C.***