

## How Property is Divided in an Illinois Divorce Case

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If you follow the tabloids and Hollywood divorces, you might mistakenly believe that property is automatically divided 50/50 in a divorce. While that is true in community property states like California, it is not true in Illinois. Illinois is an equitable distribution state, which means marital property is divided in “just proportions,” not necessarily 50/50. In deciding what is just proportions, the court considers a myriad of factors, including, but not limited to, each spouse’s contribution to the marital estate, homemaking contributions, waste of property, length of marriage, debt obligations, age and health, custodial provisions for children, and tax consequences. In short, there is not much that the divorce court is not required to consider in dividing property in just proportions. Significantly, the division of property does not turn simply on which party made the most financial contributions to the marriage. Non-financial contributions, such as homemaking and child rearing activities, may be equally important especially in long-term marriages.

In my experience, in the division of the marital estate most judges start with an internal mind set of “why shouldn’t this be a 50/50 division?” and then let the lawyers argue why their client should get a disproportionate division. In Illinois, there have been reported cases where an equitable division of property has resulted in a 90/10 division in favor of one spouse, or even 100% and zero. It is a fact specific determination, but the vast majority of the cases are within the 50/50 to 60/40 range.

In negotiating the division of property, it is as important to ensure that assets and liabilities are fairly valued, as it is to negotiate a fair percentage of the marital pot. The reason for this may not be readily apparent. A 50/50 division on paper where one party receives assets that are overvalued is not really a 50/50 division.

The valuation of assets such as bank accounts, brokerage accounts, cash value of life insurance is relatively straight forward. However, when real estate, closely held businesses, or partnership interests are at issue, appraisals and valuation reports often must be obtained from experts. Based on these reports and opinions, the parties either negotiate fair market value or leave it to the court to decide the value of the asset and appropriate division.

The value of property is required to be measured at or as close to the end of the case as possible. Particularly in today's economic climate, the valuation of assets and liability is a moving target. It is not unusual for updated valuations to be obtained while the case is pending. It is also not unusual for a spouse to obtain new property during the divorce case. That property must also be valued and could have the effect of delaying the case.

An attorney knowledgeable in property valuation and division cases is of a great value to the client. Clients faced with large or complicated property division cases should investigate the experience of the attorney before the attorney is retained, remembering that an accurate valuation of assets is often as important as the percentage division.