

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

House Bill 1437
Judiciary

(Delegate Kelley)

Divorce - Distribution of Marital Property - Equal Shares

This bill requires a court to divide marital property equally between parties in a proceeding for divorce.

The bill repeals those provisions which authorize a court to transfer an ownership interest in marital property, grant a monetary award, or both, as an adjustment of the equities and rights of the parties concerning marital property, whether or not alimony is awarded.

Fiscal Summary

State Effect: The bill's requirements could be met with existing resources.

Local Effect: Although the bill could lead to additional litigation, the bill's requirements could be met with existing resources.

Small Business Effect: None.

Analysis

Current Law: "Marital property" means the property, however titled, that is acquired by one or both parties during the marriage. Marital property includes any interest in real property held by the parties as tenants in the entirety unless the real property is excluded by valid agreement. Marital property does not include property acquired before the marriage, acquired by inheritance or gift from a third party, excluded by valid agreement, or property that is directly traceable to any of these sources.

In a proceeding for annulment or an absolute divorce, if there is a dispute as to whether certain property is marital property, the court determines which property is marital property. A military pension is considered in the same manner as any other pension or retirement benefit. Moreover, the court is required to determine the value of all marital property. It is not, however, required to determine the value of a pension, retirement, profit sharing, or deferred compensation plan unless a party has given notice that he/she objects to a distribution of the retirement benefits on an “if, as, and when” basis.

In an action for annulment or divorce, after the court determines which property is marital property and the value of that property, the court may transfer an ownership interest in specified types of marital property and/or grant a monetary award. The transfer or grant is an adjustment of the equity of the parties regarding the marital property, regardless of an alimony award.

Generally, the court may not transfer the ownership of personal or real property from one party to the other. However, the court is authorized to transfer ownership of an interest in a pension, retirement, profit sharing, or deferred compensation plan from one party to either or both parties. Subject to consent of any lienholders, the court is also authorized to transfer an ownership interest in family use personal property from one or both parties to either or both parties.

The court must determine the terms for a monetary award or transfer of a property interest, or both, after considering each of the following factors:

- the contributions of each party to the family’s well-being;
- the value of all property interests of each party;
- each party’s economic circumstances at the time of the award;
- the circumstances contributing to the parties’ estrangement;
- the duration of the marriage;
- the age of each party;
- each party’s mental and physical condition;
- how and when the specific marital property or property interest was acquired;
- the contribution by either party of nonmarital property to the acquisition of real property held as tenants by the entirety by the parties;
- any award of alimony or other provision regarding family use personal property or the family home; and
- any other factor the court considers necessary or appropriate to reach a fair and equitable monetary award or transfer of a property interest.

Background: The Administrative Office of the Courts (AOC) advises that the circuit courts filed or reopened 37,028 divorce/annulment cases in fiscal 2005. AOC does not maintain statistics on the number of cases that involve property disputes.

In addition to specific statutory provisions, the appellate courts have ruled extensively on the responsibilities of circuit courts in resolving property disputes that arise from actions for divorce or annulment. In *Bender v. Bender*, 282 Md. 525 (1978) the Court of Appeals ruled that pursuant to a marriage dissolution, it is State policy for courts to adjust the property interests of spouses fairly and equitably and to give careful consideration to both monetary and nonmonetary contributions by the spouses to the well-being of the family. In *Ward v. Ward* 52 Md. App. 336 (1982) the Court of Special Appeals stated that the clear intent of provisions governing disposition of marital property is to counterbalance the unfairness that may result from the actual distribution of property acquired during the marriage strictly in accordance with the title of the property. The Court of Appeals ruled in *Alston v. Alston*, 331 Md. 496 (1993) that generally, the trial court does not transfer ownership of any specific piece of property in a divorce proceeding, but instead undertakes a three-step process which may result in a monetary award. First, the trial court must determine which property is marital property that is subject to allocation. Next, the court must determine the value of the marital property. Finally, the court must consider various factors (listed above in the Current Law section) before determining an award.

The Women's Law Center conducted a study of financial distribution in divorce cases by analyzing the divorce cases filed in Maryland courts during fiscal 1999. The study stated that an analysis of the data revealed that relatively few requests for financial awards were made in divorce actions. Out of 1,687 cases analyzed for the study, spousal support or alimony was requested in 17.4% of the cases, monetary awards were requested in 27.8% of the cases, and 9.9% requested a share of pension or retirement accounts. No financial award was made in 65% of the cases. In those cases where some type of financial award was made, 15% of the cases provided a monetary award, 12% of the cases awarded a share of pension or retirement, and 8% of the cases awarded spousal support or alimony. The study also found that parties to a divorce action were more likely to request a monetary award after longer marriages.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), The Women's Law Center, Department of Legislative Services

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