

Step two in property division is to value all assets. This may be as simple as looking at bank statements or other information. However, real estate appraisers, accountants or other professionals who specialize in valuation may be required to place a proper value on certain assets. Sometimes the parties may estimate value of an asset to save litigation expenses. For the measure of value of an asset, it is normal to use a fair market value, i.e., the value that a willing buyer would pay to a willing seller if they each know all relevant information and there is no pressure to buy or sell.

After all the assets have been identified and the values of the assets known, a division can be made either by agreement or court order, taking the "Ferguson Factors." into account. It is important to remember that equitable distribution does not mean equal distribution, so do not assume that everything will be divided equally. The Ferguson Factors include:

- substantial contribution to property accumulation;
- spousal use or disposition of assets and distribution by agreement;
- the market or emotional value of the assets;
- the value of each spouse's separate estates;
- the tax and legal consequences to third parties;
- the extent to which property division can eliminate the need for alimony;
- the needs for each spouse;
- Any other factor that should be considered in equity.

In Mississippi, there is the added consideration as to whether marital fault exists, but any division should not be made to punish a party for marital misconduct. Remember, if you do not have a fault based ground for divorce and you do not have an agreement, you will not get a divorce. Sometimes, this will result in property settlements that may be considered unfair should one party desire a divorce more than the other.

After identifying, valuing and distributing marital assets and debts, the last step in equitable distribution is to award alimony, if the award is made necessary due to the inadequacy of the property distribution. If the property division is large, an alimony award is much less likely. Unlike the child support guidelines in Mississippi, there are no statutory guidelines to help the parties, attorneys or the judge determine what amount of alimony is appropriate in a given case.

We believe in aggressive, diligent and compassionate representation of our clients involved in

family law proceedings. Should you need representation or have questions relating to a divorce property division or other family law matter in Mississippi, please contact Robert T. Cornelius to schedule a consultation with an experienced family law attorney.